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THE  
SENTIMENTS  
OF  
AN ENGLISH FREEHOLDER,  
ON  
THE LATE DECISION  
OF  
THE MIDDLESEX ELECTION.

“ Wherever Violence is used, and Injury done, though by Hands appointed to  
“ administer Justice, it is still Violence and Injury, however coloured with the  
“ Name, Pretences, and Forms of Law.”

LOCKE on Government, B. II. c. 3.



L O N D O N,  
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T H E  
S E N T I M E N T S  
O F  
A N E N G L I S H F R E E H O L D E R .

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C H A P. I.

*Every Man's Duty to watch over the Freedom of Elections.—State of the Contest between the House of Commons and the Freeholders of Middlesex.—How varied by passing Judgment.—The Right of the People to enquire defended, particularly upon the Principles of this Constitution.—The Plan of this Enquiry.—Answer to the Objection made on the Supremacy of the House, and its Power to declare the Law.—Necessity of adhering to the first Principles of the Constitution.*

**T**HE right of the electors to be represented by men of their own choice is so essential to the preservation of all their other rights, that it ought to be considered as one of the most sacred parts of our constitution. It becomes therefore the duty of a good citizen, to watch every restraint imposed on the exercise of that right, *by whatever authority*; and to examine, whether such restraint stands well and sufficiently warranted by, that which alone can warrant it, the law of the land; either the statute-law, or that sound reason and well-established practice which may be called the common-law.

Every Man's Duty to watch over the Freedom of Elections.

During a great part of the last session of Parliament, we had the misfortune to see a constant struggle between the House of Commons and the Freeholders of the County of Middlesex. The question between them was, Whether Mr. Wilkes, having been expelled by the House, and

State of the Contest between the House of Commons and the County of Middlesex.

re-elected by the Freeholders. should, upon such re-election in the same session, be considered by the same House as duly elected, and admitted to sit, notwithstanding such expulsion? The House, taking up this matter of its own accord, for its own dignity, and in order to give that effect which it thought proper to the resolution already taken, declared him, in consequence of that expulsion, incapable of sitting in *that parliament*. Extensive as this resolution seemed to be, in time as well as matter, its operation could not have been conclusive beyond the session in which it was taken: for it is a known rule of parliament, that no resolution taken in one session can be binding upon the next. Important as it was in matter, if it had continued exactly the same, limited in time by the forms and rules of the House to the short duration of one session, open to consideration, and repealable in the next, the inattentive publick might have been inclined to disregard the dispute; to give up *perhaps too much* to the privilege and dignity of the House; to acquiesce under its authority, and admit that, though the electors had a right to elect, the House might walk in the trammels of some musty precedent, and object to the admittance of the elected; clap the mace against the door, hold it fast with a strong hand, and refuse to let him sit among the pure and chaste members who assemble there.

How varied  
by passing  
Judgment.

But since a late judgment, given by the House in the exercise of its jurisdiction, upon hearing the parties with all that solemnity which would have better become a hearing where the principal and leading question had not been *prejudged and determined in the absence of the parties*, this matter is become much more serious. It is no longer a declaration of the House of Commons, hastily and extrajudicially made, and repealable without any difficulty at the meer pleasure of those who made it: it is judgment given in a cause, and a precedent set in all its forms to operate in other cases. The publick might have *slept* over a point of privilege, but must awake to the consequences of a formal judgment. The object of the electors choice is also changed; and one, who certainly was not elected by the majority of them, is confirmed as their representative, upon the ground of the former declaration carried into effect, by determining, that the second on the poll is to be considered as duly elected, in consequence of the expulsion and declared incapacity of the first.

The novelty and importance of this doctrine call upon us to attend to it, and examine it carefully. The judgment given stands single, unsupported by any other; open therefore to all reasonable comment and observation; liable to be reversed by that great authority which can reverse wrong judgments, the Legislature of this kingdom; or to be contradicted in any similar case hereafter, by the more mature and better-informed resolution of the same court

Delicate

Delicate as this enquiry may be, we are no free people if we are not permitted to go into it, and to discuss with decency the grounds and reasons of this judgment. It is not only a modern judgment, and unsupported by any other, but it most essentially affects the rights of the constituents in every part of the kingdom. It may be thought unsafe to leave it unreversed a single session. We know not how soon *other expulsions* may take place, and the question be renewed under the prejudice of this judgment remaining on the books. Shall we run the risque of again proceeding in the dark? Is there any danger in bringing truth to light? If the question should again arise, it must be decided either by the Legislature, in which our representatives are an essential part, or by the judicature of the House of Commons, in which they are the only judges. And shall we stand back with reverential awe, and bow in humble silence to gods of our own creating! Or shall we not rather take up the enquiry, and do them the justice to believe, that a fair and diligent search into *the miraculous powers assumed by them*, undertaken without prejudice, and pursued with temper and firmness, will be the best offering an humble constituent can lay upon their altar; far beyond the myrrh and frankincense, the precious ointments, the rich vestments, and the pure gold, from the treasury of his Gr—— of ——!

In this country, the publick has a right upon all occasions, but most particularly upon such as this, to be fully informed. The rules of government drawn from arbitrary states are ill applied to *this*. In *them*, perhaps, it is humane to keep the people in ignorance. Condemned to constant oppression, the less they know, the less they feel their own misfortunes, and the great difference between the condition of freemen and that of slaves. But *here*, not only the people have a right to information, but the government cannot be carried on, nor the principles of the constitution preserved, if the mass of the people is kept in ignorance of that which passes. An election, in which *uninformed electors* are called by the King's writ to elect a *fit and discreet representative*, is the most contradictory thing in politicks that could have entered into the imagination of man. They cannot do *their part* as they are required to do it, upon the return of an election, unless the channels of communication are kept open for their information, as well upon the conduct of those they had formerly chosen, as upon the great and weighty affairs of the kingdom, to treat and consult upon which the representative part of it is called together: otherwise, their election is a thing of *hazard and chance only*, and the fitness and discretion of their representative is not the result of any *sober, well-conducted choice*. The control on the conduct of the elected, by the electors resuming their powers at the end of the Parliament, and confirming their former choice,

The Right of the People to enquire defended, particularly upon the Principles of this Constitution.



or changing it, as the trust shall have been well or ill discharged, is the most beautiful part of our constitution, and the most essential to good order, and the rights of the Commons of this kingdom. But that control is a farce, if the electors are to go to their choice *without previous information*; and the election is nothing better than a meer chaos, out of which the wise men who went before us, and framed this constitution, madly expected to produce some beautiful world by a fortuitous concourse of atoms.

It would indeed be a strange rule that should debar the constituents from enquiring into the acts of their deputies. That the House of Commons may assume *new powers*, without *due authority*, and much to the prejudice of the electors; and that it may impute to its own acts important consequences, *not founded in reason and usage*, is undoubtedly true. It is a most unfortunate case, whenever it happens. But if there arise only a bare suspicion of it, the only remedy, that alone which can quiet the contest, and “medicine us to that sweet sleep which we owned yesterday,” is a full and determined, though painful, enquiry into the foundation of those powers, and the justness of those consequences. The pursuit of that enquiry must necessarily lead to a good event; either to the confirmation of what may have been rightly done, and the restoration of harmony and confidence, or to the correction and reversal of that judgment, which, *if new and unauthorized*, cannot be permitted to remain without giving up all the *great principles* of this constitution, destroying for ever the *freedom of elections*, vesting in the *elected* the power of *choosing their associates*, and erecting the worst of tyranny, that which can exist only by the perversion of its authority to the *oppression* of those very persons from whom it is derived.

The Plan of  
this En-  
quiry.

In the examination which I propose to give this matter, it will be necessary to go back to those *known* doctrines of the law and constitution of this country, in which a plain reasoner would expect to see the ground and authority of this judgment. I shall therefore, in the first place, collect from books of the *best authority*, the several *legal* restraints on the general freedom of elections, so far as the same render or declare any description of men ineligible into Parliament: and shall endeavour to shew on what principles those restraints are founded, and by what authority they exist.

If Mr. Wilkes was not under any of those *legal* disqualifications, his incapacity must be argued upon the ground of its being the *implied* and *necessary* consequence of his expulsion. I shall therefore, in the next place, consider the power of expulsion exercised by the House of Commons, and the two purposes to which it may be directed; either for  
punishment.

punishment in the case of an *offence* within the criminal jurisdiction of the House; or, in cases out of the reach of that jurisdiction, for the removal of a member whom the House deems unfit to execute the trust reposed in him, and to enable the electors to make a better choice.

Much light will be obtained, by examining *what title* the House can set up to the power of disabling, by direct and express sentence, any person from being elected; *in what cases* this power has been exercised; *in what times* it has been carried to its utmost length, and *how long* it has been abandoned. For, if it shall appear that this power is not founded in reason or practice, it will be difficult to maintain that an incapacity, which the House cannot inflict by an express resolution and judgment, shall follow by implication and inference as the consequence of a *much milder sentence*.

It will be necessary also to examine, how far either precedent or practice, common sense or good policy, support or controvert the conclusion, that incapacity of being elected is the implied consequence of an expulsion, in either of the cases which I have mentioned; but particularly in such a case as Mr. Wilkes's, where the House expels, not for an offence against the House, and within its criminal jurisdiction, but merely for the *unfitness and unworthiness* of the member.

In this course I mean to pursue this enquiry: and I shall close it with stating the consequences which I apprehend from the judgment lately given; and in what manner, and to what degree, they seem to me to affect the constitution of this country.

The field I take is large; but the question to be discussed is important. It is natural for those who would avoid a full examination of it to endeavour to keep the enquiry more confined. The question in its most narrow extent is, Whether, as the House of Commons has the power of expelling its own members, it can also declare the consequences of its own act, and determine what disqualifications are implied by an expulsion which the same House had before inflicted? As this declaration affects the seat of the member; and the power of the House to decide the right of sitting is uncontrollable, and exclusive of all other courts; what that House has declared to be the law, must prevail. It is a declaration made by the first authority; and those who dispute it waste their breath, just as they would if they disputed the judgment of the Lords in an appeal or writ of error.

This, indeed, would be a *short solution* of the question, and a *clean removal* of all the difficulties. But the enquiry before us is not, Whether a supreme court, having competent jurisdiction, has pronounced judgment? This fact is agreed: and the question arises out of it, Whether that judgment is well or ill founded? The decision already made may *enhance* the difficulties: it cannot remove them. An enquiry into the rectitude



rectitude of any judgment given by *any court* is no pleasing task. It is more particularly irksome, when that judgment is given by a supreme court, and that court is the *representative of the people*. One hardly expects a fair hearing, having to combat the prepossessions of the people in favour of those whom they have so lately sent to represent them.

However, the important consequences attending this judgment call the publick to an early examination *of its legality*. The power of precedent is great; and an acquiescence under this decision will soon render it the *established law* of the land. The right of the publick to enquire into its legality is indisputable. The many fluctuations from time to time in the decisions of our courts of law, and the many reversals of unjust judgments by act of parliament, cry, Shame upon the man who argues for the constant infallibility of supreme courts, and a devout and implicit adherence to every thing that they have *once* determined! Had this been the case of old, *ship-money* would have been collected to this hour; the violences of the *high-commission* and *star-chamber courts* would not have brought on their dissolution; the *dispensing* power of the crown would have been still exercised; *petitions* would have been still *adjudged libels*; and members of Parliament punished in the *King's criminal courts*, for their conduct in the House of Parliament. *Excessive bail* would have been still demanded; *excessive fines* imposed, and all those violences established by *legal judgments*, to prevent which our ancestors interposed, obtained many salutary laws in the times of the first Stuarts, and at last established their plan of liberty at the Revolution. The people of these days are certainly not so *degenerate*, so *lost* to those lessons which have been taught them by their ancestors, so *dead* to all good example, as to shrink from the enquiry into the legality and justice of any *modern* judgments, given in a *new and extraordinary* case, and materially affecting their *rights and liberties*.

Of all those judgments, none seem more fit for the consideration of the people at large, than those which are given by *their own representatives* in the exercise of their *great unlimited jurisdiction* in matters of election: for none are more important. And all our historians agree, that no court has been more liable to *error*, nor more open to *abuse*, than the House of Commons in the decision of those matters.

Necessity of  
adhering to  
the first  
Principles  
of the Con-  
stitution.

Doubtless it is always useful, but upon some occasions it is *particularly necessary*, to hold out to supreme powers the *implied trust* under which they are bound to act, and the original source of that authority which is vested in their hands for the *public good*. The first principles of the constitution should be often looked to. It is an unhappy time, and big with uncertain and fearful events, when it becomes necessary to recover those principles, after having nearly lost them by long neglect. A guard should therefore be constantly kept, each deviation from them met in the first instance, and (by every opposition that our constitution will justify) resisted and controlled.

Of

Of those principles, the most valuable is that which vests in *the people* the power of chusing their own representatives in Parliament. It is by *them* that the consent of the people is given : and so long as the representation is kept pure, according to the principles on which it was from the first established, so long the consent is perfect, and the people enact those laws which they are bound to obey. But if any power whatever, not excepting even the House of Commons, interpose in the choice of those representatives, by prescribing who shall, or *any otherwise than as the law has directed* who shall not, be chosen ; that power, great as it may be, must submit to a free examination of the *grounds* on which it claims an authority, so much out of the ordinary nature of things, so alarming at the first start of it, so destructive in its consequences, so difficult to be supported in reason or practice, so decisive upon the most essential rights of the people.

## C H A P. II.

*Qualifications of Candidates, and their Disabilities at Common and Statute-Law.*

—*The Nature and Principles of those at Common-Law* — *Aliens.* — *Minors.*

— *Idiots, and Men deaf and dumb.* — *Persons attainted of Treason or Felony.*

— *Returning Officers* — *The Clergy.* — *The Twelve Judges.* — *Case of the*

*Attorney-General not eligible by special Order of the House.* — *Disabilities by*

*Statute-Law.* — *Inference from them against the Power of the House of*

*Commons to disable by its own Resolution.* — *The Power of the House limited*

*to a Declaration of the Law.* — *How the Legality of the late Decision ought*

*to have been proved.* — *Proper Mode of proceeding in new Cases.*

THE qualifications deemed essential from the earliest times to the discharge of the trust of a representative, are notoriously well founded in common sense, and similar to the like qualifications in the execution of other trusts. These, I think, may be properly called qualifications at common-law.

Qualifications of Candidates, and their Disabilities at Common and Statute-Law.

Under this head, rank those limitations and restraints which stood not in need of any particular statutes to give them authority. Many of them were self-evident, and spoke for themselves : others found their way by analogy ; and, having been received in similar cases by the courts of law, obtained an easy establishment in the House of Commons.

But there were others, founded in police, regulation, and the balance of the several powers in the state. These, not being self-evident, nor analogous to any thing else in the courts of law, but matters of arbitrary institution, have their authority from acts of Parliament.

Thus

The Nature  
and Possibi-  
lity of those  
at Common-  
Law.

Thus there are some restraints at common-law, and others by the statutes. I shall at present confine myself to the first. These are not arbitrary, to be imposed at pleasure by the judgment of *any court*. The Legislature alone, which is the united power of the state, King, Lords, and Commons, can enact new restraints. Courts of judicature, and Houses of Parliament acting *as courts of judicature*, have only the power of declaring them: and in the use of that power are bound by the law *as it stands at the time of making such declaration*. They are founded in common sense. But, as it would have been dangerous to leave to courts, or Houses of Parliament sitting in judicature, a vague decision of what is common-sense, usage is admitted as the best interpreter of it. When this usage is collected from the *antient, uniform, and uninterrupted* practice of Parliament, we have the custom of Parliament; and that *custom* is the *law of Parliament*.

These restraints therefore do not stand solely on the decision of the House, or the judgment of a court having competent jurisdiction in the case: they are much better founded in the *previous usage*, and the *repeated acquiescence* of those who are affected by them. They are also similar to the like restraints at common-law, except in those very few instances in which the clear undisputed usage of Parliament, not deduced from one, but established by many precedents and the general tenor of parliamentary proceedings, may have, for very good reasons not adopted, the practice of other courts. So that an incapacity at common-law to be elected into the House of Commons stands in need of the following conditions. It must be similar to the like incapacity established and declared at common-law in similar cases; it must not be repugnant to common-sense; nor contradicted by the usage of Parliament.

These incapacities extend to;

Aliens.

1. Aliens born. They are not part of the community. They are not the King's liege subjects. They are bound indeed to obey the laws of this country while they reside here: but they owe a constant perpetual allegiance elsewhere. They are at common-law under many other incapacities, upon the same principle which excludes them from a seat in Parliament. For, though they enjoy the rights of men in the protection of their persons and goods, they have *no civil capacity* incident to men *as members* of this community. They neither *enjoy the rights*, nor *share the burdens*, of citizens. Hence they are incapable of acquiring to their own benefit any real property, except houses for habitation as necessary for trade. They cannot hold any office: they cannot vote in the elections of members of Parliament. And the only instance in which they can be called to act in a public capacity proves their separation from the state; the



the justice of the law allowing to a foreigner, tried capitally, the privilege of a jury composed of aliens as well as natives.

2. Minors. They likewise are subject to many other incapacities at common-law. For, being considered as not of sufficient discretion to manage their own affairs, and therefore restrained from acting for themselves, they are upon the same principle restrained from acting in any private or public trust. They can give no voices in any elections whatever. It follows of course, that they are not to be considered as sufficiently discreet to be elected into Parliament, and act there in the execution of the most important trust. Minors.

3. Idiots, and men deaf and dumb. These are, upon the same principle, and for the same reason, ineligible; either as having no discretion; or as not being able to use it, if they have it. Idiots, and Men deaf and dumb.

4. Men attainted of treason or felony. From the passing of judgment, they are dead in law. Their lives and their estates are no longer theirs. They can do no legal act whatever. Persons attainted of Treason or Felony.

5. Returning officers are not eligible for the places in which they preside as such. There may be more than one objection: but the strongest, that which has least form and most substance, is this. They preside at the election, and judge and determine upon all proceedings there, as well as upon the legality of votes. They cannot therefore be *parties* as well as *judges*, and reap the benefit of their own decisions. If a judge were to try his own cause, I suppose there can be no doubt that the judgment would be set aside. Returning Officers.

6. The clergy. In those *antient* times into which we must look for those customs which give us our common-law, the clergy were a more separate and distinct estate than they are at present. They used to grant their own money. The powers of their Convocation were more extensive than they now are, and much more frequently exercised. They have *even at this time* several privileges and immunities which distinguish them from the body of the people. The Clergy.

7. The twelve Judges of Westminster Hall. They are summoned by writ to serve as assistants in the House of Lords, and attend there in pursuance of such writ. They are therefore exempted from service in the House of Commons by the law of nature, which I might here call the common-law of all nations, declaring it impossible to be at one time in two places. The Twelve Judges.

These, I apprehend, are the *only* restraints at common-law on the rights of the electors to chuse whom they please. Books of the first authority have laid down these, and in express words declared *all other persons eligible*. The grave writers of those books were trifling with their readers in the most shameful manner, if the resolution of the House of

Commons can from time to time either *create* or *declare* new disqualifications.

They are founded in good sense; analogous to the like restraints adjudged in other cases by the courts of law; and confirmed by usage. They are *not occasional, but fixed*: to *rule and govern* the question as it shall arise; not to *start up* on a sudden, and *shift from side to side*, as the caprice of the day or the fluctuation of party shall direct.

Several of them have been strengthened by the aid of several statutes: but they all arise at common-law. Thus the penalty inflicted by the statute of King William the Third, on such minors as shall presume to sit, is affirmatory of the common-law, and was designed to give a further sanction to a restraint, which, though perhaps not enforced in particular instances on partial considerations, existed from the beginning of the constitution.

If any lawyer is hardy enough to affirm, that any of these restraints derive their authority from the *act* of the House; it is a desperate doctrine, and the spirit from which it proceeds is ripe for any mischief. Our constitution does not know *any court* so supreme as to be above reason, so absolute as to be able to *make* a custom under pretence of *declaring* it. And the doctrine here asserted is such as would maintain the resolution of the House to be the law of the land by virtue of its own authority only, notwithstanding it may have usage, reason, and justice, to contend against.

Case of the  
Attorney-  
General not  
eligible by  
special Or-  
der of the  
House.

I am tempted here to give the reader a very particular case, in which he will see the effect of a resolution of the House of Commons, repeatedly taken upon much deliberation, in opposition to good sense and reason, common usage, and the rights of the electors.

4 Inst. 48.

Lord Coke tells us, that by special order of the House of Commons an Attorney General is not eligible. This has induced others to assert, that the House can make such special order when it pleases, and thereby render ineligible those who were eligible before. The doctrine which I am now combating, that any restraint declared by the House is sufficiently authorized by the *act* of the House making such declaration, is in effect and substance that very assertion.

This indeed would be a very extraordinary power: and since it seems to have been admitted, at least in one case, by one who was great in Parliament as well as in the courts of justice, and if it is good law in one case must be good law in others, it becomes necessary to examine the authorities on which it is founded.

They are these:

11 Apr. 12 Jac. after much debate, and search of precedents, the House resolved; first, "That the Attorney General shall for *this Parliament*  
" remain



“ remain of the House ;” secondly, “ That *after this* Parliament no Attorney General shall serve as a member of this House.”

The inconsistency of these resolutions is wonderful; and the only proper use to be made of them is drawing this salutary doctrine, That where power goes beyond right, it finds no resting-place. It never knows where to stop. Sometimes it boldly runs its full length, and creates infinite confusion. At others, it stops short; and the very stop, instead of removing the offence, raises a new objection. In every stage, from the beginning to the end, appears the danger of passing the bounds prescribed by law.

I ask, if Attornies General are not eligible, *by what tenure* did the Attorney General, 12 Jac. continue to hold his seat in that Parliament? How came Lord Coke to attend so closely to the *special order* contained in the *second* resolution, as entirely to overlook that which was contained in the *first*? What a ground is here laid for extending the jurisdiction and authority of the House! the law *declared* one way by the second resolution, and a member permitted to sit *in opposition* to that declaration by the first! The House must have acted illegally, either when it resolved, that no Attorney General should serve, and assumed to itself in fact a power of *making* the law, and declaring incapacities *never before heard of*; or when it passed its former resolution, dispensing with that law, and permitting the Attorney to sit notwithstanding such incapacity.

However, inconsistent and illegal as this judgment was, it became a *precedent*; and we have an alarming proof here, that precedents are set in order to be followed. For, in the Parliament immediately following, 8 Feb. 1620, the House resolved, “ That *the order made the last meeting*, concerning the not serving of the Attorney General in this House, shall stand:” and a new writ issued to elect a member in the room of the Attorney General.

Still our attention is called to the force of precedent. For, 10 Feb. 1625, a new writ is ordered to issue, for electing a member in the room of Sir Robert Heath, Attorney General, “ *according to the precedent* “ 12 Jac.”

Here is the law of Parliament three times declared in the space of eleven years, by a court having *competent jurisdiction*. These declarations are made with much gravity, and have every circumstance that could give them authority; search of precedents, debate, much deliberation, repeated confirmation in times when the House became very respectable, and were in force for many years. I find in Lord Clarendon’s History, that when Herbert was made Attorney General in 1641, “ his principal object was “ to get out of the House of Commons, for it was not usual in those “ times for the Attorney to sit in that House.”

Vol. I.  
p. 210.

How then came these judgments and declarations to lose their effect? and why, in all the Parliaments from the Restoration to the present time, have we seen Attornies-general sit unmolested? Because those judgments and declarations probably arose out of prejudice, certainly were not founded in reason, and were contradicted by usage. It was *folly* to debar a man from serving in the House of Commons, where he might be very useful to the publick and to those who sent him, in order that he might assist *in carrying a message* from one House to the other. The higher and more important service in one House, supercedes the less important in the other. The Journals, before 12 Jac. as well as since the Restoration, *teem with instances* of Attornies-general serving in the House of Commons, unmolested and unquestioned.

These judgments, however, still continue in the same Journals unre-scinded: but the prejudices under which they were made are worn out, and they are themselves sunk in shame and silence, destroyed by their own folly and injustice, and entirely torn up by the roots by the subsequent usage, recovering and confirming the rights of the electors. They stand in the Journals, illustrious monuments of the short-lived efficacy of the resolution of a House of Commons, against reason, law, justice, and usage. The writ of summons to those whose attendance is not necessary to the proceedings in the House of Lords, to all under the rank of Judges whose attendance *is necessary* for very obvious reasons, operate no longer to the prejudice of the electors. They have recovered their right to chuse those who may be most fit to serve them. The same Lord Coke observes, and in the page immediately following, that “the crown cannot grant a charter of exemption, because elections ought to be free, and the attendance of the elected is for the service of the whole realm, and the benefit of the King and his people, and the whole commonwealth hath an interest therein.” It is strange that he should be of opinion, that the House of Commons can do in this respect what the Crown cannot, and that the *same reasons* do not hold to *restrain* that House from rendering ineligible whomsoever it pleases, by its own special order.

§ Inst. 49.

Disabilities  
by Statute-  
Law.

I shall be short upon the next head; the restraints by statute-law, and founded therefore in the consent of the whole community. These are arbitrary, take their rise from expediency, and are liable to be changed from time to time by that authority which gave them being. Such are the restraints which require certain landed qualifications, impose certain oaths, disable certain officers, and all persons holding pensions from the Crown during pleasure. Such are also those old acts requiring residency in the elected, though now necessarily fallen into disuse; or perhaps virtually repealed by those acts which, requiring landed qualifications, render the others impracticable. Such also are those temporary restraints  
which

which cancel the former choice by vacating the seats of members accepting certain offices, but leave them capable of being re-elected.

If these restraints could have been established by any authority less than that of an act of Parliament, it is not to be imagined that the House of Commons would have applied to the other branches of the legislature, in a matter which entirely concerned itself, and its constituents in their elections. Though every application risked at least the mortification of a refusal, we have seen *in our own times* place-bills, and pension-bills, tendered at the bar of the House of Lords from year to year, notwithstanding their only object was the independency of the House of Commons. The great patriots who tendered those bills had forgot Lord Coke's doctrine of the efficacy of a special order of the House; and never dreamed of that modern doctrine which is the exact counterpart of the other, and tells us, that any restraint declared by the House derives sufficient authority *from that declaration*, and is *good in law*.

Instances may be brought of the experiment made, how far a vote of the House might be effectual. The vote has been dropt, and the effect obtained afterwards by an act of Parliament. Thus, in particular, 2 April, 1677, the House came to a resolution to prevent expences in elections after the teste of the writ, much in the same words as in the act afterwards passed, 7 W. III. This was made the standing order of the House at that time. It was renewed and confirmed as such, 23 May, and 21 Oct. 1678. But, to *give it effect*, it became *necessary* to pass an act of Parliament for that purpose six years after the Revolution.

Inference from them against the Power of the House of Commons to disabie by its own Resolution.

The House of Commons has the right, incidental to its judicature, of declaring what incapacities are legal. But it behoves the House to take care that, instead of exercising the power *which it has*, it assume not *those which it has not*; that, from the temperate and judicious use of a *legal power*, vested in it for the benefit of the people, it swell not to the utmost pitch of *extravagance and despotism*, and *make the law*, under pretence of *declaring it*. If it should, the Commons will have reason to wish that judicature in some other court *more easily kept in order*.

The Power of the House limited to a Declaration of the Law.

It is much to be lamented that those who maintain the decision given in the Middlesex election to be nothing more than a declaration of the law, do not take the usual way of proving it. If they do not like the list of disabilities already given, let them give their own. Let them ransack all the books of authority from Lord Coke to Dr. Blackstone, the Statute-book and the Journals; and, having brought before us such a list of *legal disabilities* as those authorities will support, and they themselves will abide by, let them shew how, *by any construction whatever*, Mr. Wilkes's case can be brought within any of those disabilities; they will have very great

How the Legality of the late Decision ought to have been proved.



## THE SENTIMENTS OF

great merit with the publick, and the question will be most chearfully decided in their favour.

But if, instead of doing this, they avow it to be a *new case*, a disability *not yet* entered in any of those lists which are to be found in any of our law-books; nor by any logick or colourable artifice whatever to be brought within the *spirit and intention*, if not within the letter, of the law; a proceeding *not compleatly supported*, even by a single precedent; the consequence is too obvious. The decision, if it were ever so just and wise to make it, was much *too big* for any thing less than the whole legislative authority.

Proper Mode  
of proceed-  
ing in new  
Cases.

Infinite is the number of cases, and very frequent the occasion of their coming to light, in which appears the expediency of new powers in magistrates, courts of justice, and either House of Parliament. But these powers cannot be *assumed*. They must be derived from a *superior* authority to an *inferior*, from the Legislature to either House of Parliament. Those who think such new power necessary, must be content to fetch it from those who alone have authority to grant it.

## C H A P. III.

*Expulsion does not imply an Incapacity of being re-elected, in the common Sense and Meaning of the Words.—The Purposes for which the House exercises its Power of Expulsion.—For Punishment of an Offence.—For the Unfitness of the Members.—The Charge against Mr. Wilkes explained, as bringing his Case under the latter Head.*

I DO not find that it has been pretended that Mr. Wilkes was under any of those *legal disqualifications* which I have already mentioned. But it is said, that the House, having expelled Mr. Wilkes, declared *the legal consequence* of that expulsion. “ This consequence, we are told, is not only legal, but necessary. It is implied in the very meaning of the word itself. Expulsion clearly, *ex vi termini*, signifies a total, not a partial, exclusion. Every man of plain sense, nay every young academician or school-boy, will tell us, that the meaning of expelling a man from any society is, that he should *never* be a member of that club, or of that college, or of that school, any more.” This writer appears to put this question on a fair footing, the *common sense* and *meaning* of the words. Another is more on his guard. “ He troubles not himself with the *grammatical* meaning of the word Expulsion. He regards only its *legal* meaning.” And this writer joins with all the rest in labouring in the

The Case  
Considered,  
p. 9.

Answer to  
the Question  
Stated, p. 37.

the most strenuous manner, that that *legal meaning* may be understood to be according to the law and custom of Parliament.

These several writers must be met in their own way. And first, we must totally forget the meaning of words, if we can persuade ourselves that expulsion, which is the *less* degree of punishment, involves disability, which is the *greater*. There is no understanding which does not comprehend the difference between putting a man out of a room, and shutting the door against him, so as to exclude him for ever, or for any limited time. Expulsion is literally the one, and disability of being re-elected is the other. Does the removal of any thing imply that it shall never be brought back? or the dismissal and discharge of a steward imply that he shall never again be restored to his trust? Now removal, dismissal, and discharge, are in common sense, as well as in parliamentary language, synonymous and equivalent to *expulsion*. They have *all* the same effect: they operate *all* to one certain degree. They have their *full* and *complete* effect, by putting the expelled member out of the society. But incapacity of returning there is something more. If it is intended, it ought to be expressed, not implied. An admission in pursuance of a re-election by no means takes off the *effect* of the expulsion. The expelled member is no member of the society. He is just the same as a new man: and if he is re-elected, he returns indeed into the society, but not to his *former* seat or rank there. He enters into it as *the youngest member*. Particular statutes may restrain particular societies: persons conversant in college-statutes know that the common expression is, "*Expellatur et in perpetuum excludatur*;" otherwise I see nothing in common sense that puts it out of the power of a master *again* to receive his scholar, or the electors of a college and the members of a club *again* to elect an expelled member. Can any man doubt that in clubs and schools it has been often done? and if it has, that is enough to shew that expulsion and disability are not, in the common acceptance, synonymous and equivalent words. Various difficulties of a different kind may arise in colleges. Where those who expel from them have the power of election also, it is no more to be expected that the choice will fall on the expelled member, than that, if the only voters for Middlesex were the Members of the House of Commons, Mr. Wilkes would carry his election.

Expulsion does not imply an Incapacity of being re-elected, in the common Sense and Meaning of the Words.

The Case Considered, p. 9.

Hence I think it appears, that there is a manifest difference between expulsion and disability, in the common sense and meaning of those words; and I shall be able to prove beyond a doubt, that in a *parliamentary sense* this difference has been *constantly* observed by the House of Commons.

Let us then enquire into the law, the language, and the custom of Parliament, and see whether they support or condemn this doctrine.

I take



The Pur-  
poses for  
which the  
House exer-  
cises its  
Power of  
Expulsion.

I take it, that the power of expelling, however it might have been controverted at first, is *now* sufficiently warranted by a very long practice, frequently exercised, and, what is more material, confirmed by the constant acquiescence of the electors. It seems, indeed, one of those extraordinary powers, which never could have been well established but by consent; but the continued exercise of it, *without dispute*, implies consent, and it is well established now.

For Punish-  
ment of an  
Offence.

This power may be exercised, first, for the punishment of the member *for some offence within the criminal jurisdiction of the House*.

These are, offences against the freedom of elections, the constant and known privileges of the House, its independence and its legal authorities, the freedom of its debates, and the peace and good order of its proceedings.

For these the House may punish at its *discretion*; but that must be *real discretion*, confining itself within proper limits, not an *extravagance* and *wantonness* in the exercise of great power, passing all bounds, and acting arbitrarily and tyrannically, because it is supreme, absolute, and without control.

As it is a power founded on *usage*, there ought to be great tenderness and caution in exerting it in *any new case*; especially in those in which the House takes up the charge *spontaneously*, pledging itself as a *prosecutor*, sometimes as a party, interesting itself in the maintenance of its own dignity, and in the end passing judgment under prejudice. We should look carefully for precedents; and as the Journals unfortunately give us precedents of every sort, in that search we should rather incline to those which furnish lessons and examples of *temper and moderation*, than to those which are invidious instances of authority and rigour. They should be applied to check and control the exertion of *unlimited power*, by pointing out happy examples of former moderation, or the dismal consequences of intemperance and passion. They are grossly misapplied, when brought to exalt the *pride* of the House, and animate it to *excess of power*, merely because there is *no control*, and the like excess has been committed in former times.

It is not necessary to say more on the first purpose for which the House exercises the power of expulsion, for the punishment of such offences as are within its criminal jurisdiction: for the case in question does by no means come under that head. Mr. Wilkes was clearly not expelled in the last session of Parliament for any of those which were *at that time* within its criminal jurisdiction.

For the Un-  
fitness of the  
Members.

Secondly, the House exercises this power for another purpose: for the removal of such members as are found *not fit* to execute their trust.

Mr. Wilkes's expulsion comes under this head. The charge against him was indeed so accumulated, that it is very difficult to say precisely *for what* he was expelled; and I can easily conceive, that if the question had been put separately for each offence contained in that charge, judgment of expulsion might not have passed for either. However, as the House exercises this power of expulsion only for the two purposes already mentioned, if I prove that none of Mr. Wilkes's offences could at that time be brought within the criminal jurisdiction of the House, it will follow that he must have been expelled for his unfitness only.

The first offence contained in the general charge is, the publication of the North-Briton, Number XLV. This had been taken up in a former Parliament. It was resolved to be an offence against the House of Commons then sitting; and Mr. Wilkes, being adjudged by that House the Author and Publisher of it, was expelled. Punished in a *former Parliament*, he could not be brought a *second time* to punishment in this Parliament for the *same offence*. It would be a libel on the House of Commons to suppose it thus vindictive, and gratifying its resentment by departing from the known rules of justice.

The second offence contained in the general charge is, the publication of an impious and obscene libel. This was originally taken up in the House of Lords, in a former Parliament, as matter of privilege. It was afterwards converted into an offence against *the State*: the Crown was addressed to prosecute, and Mr. Wilkes was convicted. But it was no offence against the *House of Commons*, nor in any respect within its criminal jurisdiction.

The third offence contained in the same charge was, writing and publishing a libel in a short introductory preface to Lord Weymouth's letter to the Magistrates of Southwark. It is difficult indeed to find a just description for this offence. It should seem, from the *manner* in which it was taken up in the House of Lords, and the *offer of lenity* which their Lordships were pleased to make to Mr. Baldwin, the Publisher, if he would inform against the Author, that it was at that time considered there as a *breach of the privilege* of that House. For, if it is taken in any other light, I do not see what *lenity* their Lordships had to offer. They must know, that, except in respect to the breach of their privilege only, as they could inflict *no punishment*, so they could shew *no mercy*: they could neither *pardon* the offence, nor *mitigate* the severity of any sentence.

In hopes of this lenity, and consequently under terror of punishment, Mr. Baldwin informed against Mr. Wilkes. It was *then* voted, an insolent, scandalous, and seditious libel, tending to inflame and stir up his Majesty's subjects to sedition, and to a total subversion of all good order and legal government. The information laid before the Lords, and their

The Charge  
against  
Mr. Wilkes  
explained,  
as being  
his Case un-  
der the latter  
Head.

resolution upon it, were communicated by one House to the other. Their Lordships had started very good game: the Commons had the honour of hunting it down. If Mr. Wilkes had offended against the privilege of any of the Lords, ample atonement was made: for the House, with all *proper humility*, and *respect to their Lordships*, expelled its own Member. But as to the *offence against the State*, though the Commons concurred with the Lords in their resolution, declaring it one of the highest misdemeanors that a subject could commit, no address for prosecution went from either House. Nothing indeed appears to have been in the view of either of the Houses, or of his Majesty's Administration, but the expulsion: and that great object being obtained, the offence against the State remains unnoticed and unprosecuted. And this is the more extraordinary, because, when Mr. Wilkes was charged with being the Author of this desperate libel, he did *more than confess it*: he asserted it as his own; and he declared, that he *gloried* in being the Author of it.

Whatever this libel was, and however common understandings may be puzzled by the different modes in which it has been taken up at different times, and in different places, and at last entirely dropped as a State offence; it is very easy to say *what it was not*. It was not any of those offences which are within the criminal jurisdiction of the House of Commons. Since therefore of the three offences for which Mr. Wilkes was expelled, only one of them was *at any time* within the jurisdiction of the House, and *for that offence* Mr. Wilkes had been *before* punished, it follows that in the last session of Parliament he was expelled merely because he was unfit and unworthy to sit as a Member of Parliament. Without troubling the Reader with the several proceedings upon his repeated re-elections, and the returns made by the Sheriffs, the several resolutions of the House bring before us this question: Whether, where a Member has been expelled merely for his *unfitness* and *unworthiness* to represent those who chose him, the consequence will hold good, that he *thereby* becomes incapable of sitting in Parliament, and the next on the poll is to be admitted as duly elected?



## C H A P. IV.

*The Power of the House to disable by express Sentence, considered.—Arthur Hall's Case and Dr. Parry's rejected as bad Precedents.—The rest of the Precedents stated.—Whitlocke no Authority in this Case.—This Power not founded either in Reason or Precedent.—Particular Considerations on it when exercised for Punishment.—Impossibility of supporting it for that Purpose by any Custom of Parliament.*

ONE would imagine, that those who maintain the consequence stated at the close of the last chapter, were well prepared to maintain the right of the House to disable by express sentence. For, if upon enquiry it should be found, that the House neither *has* such right, nor *ought to have it*, it would be a very unnatural conclusion that should slip it unawares upon us as the consequence of a much more moderate punishment.

The Power of the House to disable by express Sentence, considered.

It will be proper therefore to consider, in what cases and in what times the House has exercised this power; how extravagantly it abused it; and when it appears to have laid aside and abandoned it. I shall lay before the Reader all the cases which I have heard of in their order of time, without making any distinction at present on the different purposes for which I have already said the House has exercised the power of expelling its Members. For I mean in this chapter to controvert generally the power of the House to disable by its express resolution for that purpose.

14 Feb. 1580, Arthur Hall was *removed, severed, and cut off* from being a Member *during the continuance of that Parliament.*

Arthur Hall's Case, and Dr. Parry's rejected as bad Precedents.

15 Feb. 1584, Dr. Parry was disabled to be any longer a Member of that House.

Before I proceed to the other precedents, I must stop a little at these, and make a few remarks upon them. Some precedents destroy themselves. No sober man will rely on the authority of proceedings in which there appears a manifest abuse, a daring illegality, and a slavish submission to power. Such proceedings are vicious in the whole as well as in part; and ought never to be quoted in *order* to be followed. Hall's offence was, reflecting on the proceedings of the House, publishing a discourse to the diminution of its authority, and asserting, among other things, that the House had judged and proceeded untruly. For this offence the House thought proper, in addition to the punishment already mentioned, to *impose a fine*; to set that fine at no less than 500 marks, a very great sum in those days; to imprison him for *a time certain*, six months, and from

## THE SENTIMENTS OF

thence till he should make a recantation. Unless therefore we are inclined to maintain the authority of the House to *fine*, and in *any sum it pleases*, and to imprison *as long as it pleases*, without any limitation to the continuance of the session, we must reject this precedent as an instance only that the House of Commons may be led, by its intemperance and passion, in the pursuit of its own dignity and the punishment of those who offend against it, to an abuse of its power, and the exertion of an authority which it has not by law. Dr. Parry was charged with high treason. He was probably a madman; but, if he had been ever so sober, the conduct of the House of Commons towards him was enough to drive mad the most sober man. For while he lay under the charge, *before his trial*, that House paid its servile court to the Queen, by prejudging the sentence of the law, and praying her leave to pass a bill for his execution after conviction, in such a manner as might be fittest for his extraordinary and most horrible kind of treason. There is in this proceeding an inhumanity towards the criminal, as well as an abject servility towards the Crown, which will I trust prevent its being ever quoted as a precedent to be followed in any House of Commons.

The rest of  
the pro-  
ceedings stated.

21 June, 1628, Sir Edmund Sawyer was, *by three separate resolutions*, expelled, committed to the Tower, and declared unworthy ever to sit as a Member of that House. His offence was, tampering with a witness, one Dawes; and advising him, as he was not on oath, not to tell the House what he knew of a matter wherewith Sir Edmund Sawyer was charged.

9 Nov. 1640, the House availed itself of the temper of the times; and, relying on the general discontent at the abuse of the prerogative, came to a resolution as insupportable in law, as that abuse which it pretended to correct. For it resolved, that all projectors and unlawful monopolists should be disabled from sitting in that House: and 21 Jan. following, declared Mr. Wm. Sandys, Sir Jo. Jacob, Mr. Tho. Webb, and Mr. Edmund Wyndham, within that order, and therefore persons who ought not to sit in that Parliament.

27 May, 1641, John Taylor was expelled, and made incapable of ever being a Member of that House, for having declared, that to pass the bill of attainder of Lord Strafford, was to commit murder with the sword of justice.

30 Oct. 1641, Fitzwilliam Cognition was resolved to be a monopolist within the order 9 Nov. 1640, and a new writ issued.

2 Nov. 1641, H. Benson was declared unworthy and unfit to be a Member, and that he shall sit no longer. He was sent for as a delinquent; a new writ was ordered; and then, *by another resolution*, he was declared unfit and incapable ever to sit in Parliament, or be a Member of that House hereafter. His offence was, granting and selling protections.

2 Feb.



2 Feb. 1641, Sir Edw. Dearing was *expelled* and *disabled*, for publishing a book against the honour and privilege of the House.

9 March, 1641, Mr. Trelawny was *expelled* and *disabled* to sit as a Member of that House during that Parliament. His offence does not appear on the Journals: but Lord Clarendon informs us, that it was on a charge of denying the power of the House to appoint its own guard.

In the following year, 1642, the precedents grow upon us so abundantly, as to lose all pretence to authority. In thirty-five different places in the Journal of that year, Members are rendered incapable of sitting. Forty-nine were expelled in the months of August and September; and most of them, I believe I may say all of them, were declared incapable of sitting.

The majority was plainly clearing the House of their obnoxious brethren. To render their policy *complete*, and better secure to their order of incapacity the *effect intended*, new writs were seldom issued at the time of the expulsion; and frequently not issued at all.

No wonder that the licentiousness of the House infected the Army. When that House, which is for *check* and *control*, and to keep the other powers within the limits of the law, becomes itself a *transgressor* of that law, and assumes to itself an absolute authority against law, the other powers will follow the example, and that which holds the sword be found the strongest. Thus the army, in 1648, imprisoned forty-seven, and secluded ninety-six, Members of the House of Commons. And in 1656, upon the meeting of a new Parliament, the Protector made order, that no Members should be admitted to take their seats there, unless they brought a certificate of their good disposition from the Lord Protector's council.

Out of this confusion arose order; and from the Restoration to the present time the sentence or punishment has never gone beyond expulsion, except in a few instances of Members disabled from being elected at *particular boroughs*, on proof of a *corrupt influence* obtained in them.

Whitlocke has been quoted as a great authority for this power in both Houses of Parliament: and he goes so far as to say, that the House can disable the offenders from sitting in *that or any other Parliament*. He quotes for his authority the Journals of both Houses, but no particular places or dates. His authorities, if we were to see them, would be drawn principally from those times of confusion in which he lived, and was an active Member in those very precedents. That *he* should continue to revere them to the day of his death, was natural enough. But it is surprising that, in these times, any man of *learning*, and of a *cool and deliberate temper*, should adopt Mr. Whitlocke's sayings without suspecting his authorities, and not rather revolt at the extravagance of a doctrine which extends the power of disabling, by a vote of one House only, even to another

Whitlocke  
no Authority  
in this  
Case.

ther Parliament. Where *part* of the assertion is indisputably *false*, doubts will arise upon *the rest* in all minds not determined to adopt whatever might answer the present purpose.

THESE  
PRECEDENTS  
ARE  
THE  
SAME

Stopping therefore with the year 1641, and not going up to those shameful precedents of Dr. Hall and Dr. Parry, we have seven precedents of the House exercising a power of disabling by express sentence. If I knew more I should not be afraid to state them. I am sufficiently composed upon this matter; and, trusting to those *barriers* which are visibly marked in our constitution, have no fear of any weight of *precedent* that may be brought against me. Of those seven precedents, I might well object to two as manifestly illegal, being founded on an order of the House against projectors and monopolists, in which the law was avowedly *made* by that House only, not *pretended to be declared*.

But let the whole list be supposed to apply, and with full effect; they are a *scanty number* to support so extraordinary a power. That of expulsion is great: it may be used to disgrace, to harass, to ruin, an *individual*; but it carries with it no *public danger*. If the House abuse its power in the exercise of it, the electors have their remedy, by re-electing the expelled Member. It was probably the sense of this remedy *being in their own hands*, that prevented their questioning this right when it was *first* exercised. It is the same satisfaction, the same persuasion of their own security, that has kept them quiet ever since, and will probably for ever stop all controversy, if consequences *equally dangerous and new* are not imputed to the sentence.

PARTICULAR  
CONSIDERATIONS  
ON  
THE  
NATURE  
AND  
EXTENT  
OF  
THE  
POWER  
OF  
EXPULSION

But when incapacity of being re-elected is super-added to the expulsion, it is no longer the case of an individual; the rights of the electors are most materially affected. A stop is put to the freedom of their election. The number of persons open to their choice is diminished: and though that diminution is in *one only*, that single person may be their first favourite, and perhaps on that account rendered incapable. Nor does the evil stop here: this is only the *beginning of sorrows*. The elected learn to taste the sweets of culling their company, not only by *removing* troublesome opponents, but barring their re-entry; and, by putting a negative on the *first* interest in any place, make room for the *second*. Reason cries aloud against such a power *in any set of men whatever*. Happily we find her opposed by no considerable list of precedents, except in eighteen years of confusion from 1642 to 1660. And when we see this power *so seldom exercised* in old times, *so grossly abused* in those, and *so entirely abandoned* since, we cannot but conclude that *usage disclaims* the power as much as *reason protects* against it, and that it *does not exist* in our constitution.

If I were to admit this power in any case, it should be where the House exercises a criminal jurisdiction in offences properly within the cognisance

cognisance of the House, and punishes *at its discretion*. If, in support of such a case, I saw a strong uniform custom from the earliest times, I might lament the uncertainty of human discretion, which, while it punished the offender, was inattentive to the rights of the innocent. But I might deem myself precluded *now* from disputing the validity of such a custom, and might hold it safer to be consistent, and “*stare super vias antiquas*,” than to render every thing uncertain by departing from an established custom. Where the House has a power to punish *at its discretion*, it is a desirable thing that the limits of that power should be fixed by a known and well-established usage.

But fortunately there is no such usage in support of this power. Precedents in a supreme court which cannot be controlled, and acts without appeal elsewhere, are good authorities for what that court *cannot* do, or *ought not* to do: but they should be taken with mistrust, when they are brought to prove what it *can do in the fulness of its power*. They should be clear, uniform, and consistent; collected from the earliest parts of our history, set in sober and temperate times, and strictly applicable to the case in question.

Indeed it would be folly to look into the antient history of Parliaments for such a custom. Yet, foolish as it is, we must look there for that *consuetudo Parliamenti* which is to be the ground of this or any other declaration of the law and custom of Parliament. It is a most unhappy case when that antient history, which should *support* the declaration, sets before us known and indisputable facts in *direct opposition* to it.

Impossibility  
of sup-  
port-  
ing it for  
that pur-  
pose by any  
Custom, of  
Parliament.

In antient times, the attendance in Parliament was not a privilege, but a service; and such as men wished to be excused from. They were compellable to undertake the office. Instances may be produced from the year books, and other antient records, of applications made for charters of exemption. Our law-books sufficiently inform us of that fact when they tell us, that such charters are illegal, and if granted are void. If in those times incapacity had been proposed in any case, it would have been thought a strange punishment that should discharge the criminal from undertaking the burden. It is not to be expected from the discretion of the court of King's-bench in our time, that part of the *punishment* of offenders will be an incapacity of serving the several burdensome offices which they are now compellable by law to take upon them.

Incapacitating a Member of Parliament, is at all times *punishing the constituents* in some degree. For they not only lose the benefit of their former choice, but are disabled from renewing it if they think proper. But in old times it would have been particularly absurd, as the offender would have rejoiced in his exemption from the service, and the constituents been the only sufferers.



## THE SENTIMENTS OF

If this custom of Parliament is to be determined on the principles of the common-law, it will be impossible to maintain it: for there was clearly a time when it could not have obtained. If there ever existed a time when the service was not in the estimation of mankind an advantage, it is impossible that at that time incapacity could be a mode of punishment. That there did exist such a time, will not be controverted: and all lawyers agree, that That is no custom, the commencement of which can be proved. The precedents therefore, such as they are, are quite inadequate to the maintenance of this power, when exercised for punishment: for it is not *in the nature of things* that those precedents should be founded in, that which alone can give them authority as good precedents, the law and custom of Parliament.

In the next chapter I shall consider how far this power is justifiable, when exercised on account of the unfitness and unworthiness of the Member.

## C H A P. V.

*No Power in the House to disable for Unfitness only.—It can expel, but the Electors can re-elect.—The Consequences considered, as well where the House abuses its Power in expelling a good Man, and refuses to receive a Member legally elected, as where the Electors persevere in sending a bad Man back to Parliament.*

No Power  
in the House  
to disable  
for Unfitness  
only.

IF there are strong objections to this power of disabling, when it is exercised for the punishment of an offence, there are still stronger when it is exercised for the unfitness and unworthiness of the Member.

He is unfit. For what? To keep company with the rest of the House! With great deference let me say it; they have no authority to ask that question, and make that enquiry. They must keep such company as the electors are pleased to send them, not being disqualified according to the known laws of the land. They are not a *voluntary* society to chuse their own company, and meet whom they please; to cast a black-ball against those whom they do not like, and then contend, that it would be trifling, nugatory, ridiculous and inconsistent, to re-admit into the club the man who had a few days before been expelled from it.

They must not ask, whether the man whom the electors have chosen is fit company for themselves. That election is the authority by which he acquires a right to be admitted. His title is, that he is chosen by his constituents, not that he is adopted by the House. He derives his full

powers

It can expel,  
but the  
Electors can  
re-elect.

powers from those who sent him. The rest of the elected, as such, are *not parties* to his election: they gave *no voices* at it, and they have *no negative*. The House has no authority to try, whether his electors have made their choice wisely or otherwise. They can only try, whether he is duly elected; and whether, at the time of his election, he was under any disqualification, either at the common or the statute-law. If he was *duly elected*, and not *legally* disqualified, his electors may lay claim to his admission, not as matter of *grace and favour*, but as matter of *right*.

If any crime appears to have been committed by him since his election, or, having been committed before, is now for the first time proved upon him, the House may interpose *for one certain purpose*, and no other. It may consider, whether this criminal is fit to execute the trust which has been placed in him; and it may decide that question in *the first instance*.

The only reasonable ground, upon which this power in the House can be justified, is this. It is a fair presumption, that if the electors had known, at the time of the election, that this man was capable of committing such offences, they would not have chose him. The House therefore steps in, and, by a kind interposition of its authority, expels the Member, cancels the former choice, and enables the electors to go to a fresh election.

But that election must, according to the terms of the statute, 7 H. IV. be “freely and indifferently made, notwithstanding any request or commandment to the contrary.” It would be a manifest perversion of the best thing to the worst purpose, if the judicature of the House of Commons was to be turned against the freedom of elections. A negative put by the House on any person, who was eligible the day before that negative was given, is as much a commandment, as any thing that ever appeared in the King’s writ, or in his letter to the Sheriff. Neither the Crown nor the House of Commons can interpose. The electors are in the exercise of that great right, on the preservation of which they must depend for the continuance of their freedom, and the security of their property: and *they* are now become the judges in whom they may best place their trust.

They may consider, if they please, the fitness of their former Member. Human nature is frail. Prejudices may exist, *even in a House of Parliament*. The expelled Member may be the most fit; and the electors wisely resolve to trust no other person. Or the fault may be *on their part*: caprice and peevishness may govern the hustings; and a bad man be sent back to Parliament.

It is an unhappy case, when this difference arises between the electors and the elected: but there is nothing fatal in it, if the rights of each are

[illegible]

I have stated the consequences, where the House has not only acted wrong in the first instance, but persevered in it. Now let us suppose, that the obstinacy of the electors has led them *again* to make a bad choice. "*Grex totus in agris unius infectus scabie cadit,*" applies not to the House of Commons. Mr. Wilkes himself might have been admitted there long ago, without the least danger of spreading the infection. Whatever may be the crimes which have brought on his punishment, they are not likely to take deep root in the House of Commons, and to thrive in that soil. I have always thought it a gross affront to the House of Commons to imagine, that one bad man can do any mischief in it. It puts the Members there on the footing of old maids and prudes, who are afraid to let sin come near them, lest they should be tempted to taste it.

On the other hand, to render incapable by a *vote of the House only*, and to keep the door constantly shut against, any man *legally* elected, upon a *groundless* alarm and apprehension of *imaginary* dangers, is most effectually destroying the freedom of elections, and overturning the constitution. If the vote of the House is sufficient to make a *new* law, it will soon have sufficient authority to repeal the *old*. If any House of Commons can, by its resolution, render any man whatever *ineligible*, who was by the law of the land *eligible before* such resolution, the same House is *above all law*; can continue its duration beyond the term of seven years; and can alter, repeal, and dispense with, acts of Parliament, at pleasure.

If the elected have a right to say *who shall not* be their comrades, they will soon acquire influence enough to say *who shall*. They will no longer attend to the interest and wishes of *their constituents*: They will look for security



security and power to *their own body*. The Minister will advise the Sovereign, to perplex himself no longer with romantic ideas of reigning in the hearts or affections of his subjects, or to risque the prerogative by overstraining it. Corruption will be taught to flow in copious streams from the Treasury to the Parliament, and the King will govern by resolutions of the House of Commons. It is difficult to imagine, that the condition of the people can be made worse by any future event: and that Minister will be a good servant to his Master, who shall give this turn to so distempered a state. If he does not, the history of our country, little more than a century ago, suggests to us fears and apprehensions of the revival of the like evils: a disordered Commonwealth rising out of the ruins of Monarchy, and petty tyrants oppressing those from whom they derive their authority.

The end is sufficiently answered by the removal of the unworthy Member. The objection, that the House may then be obliged to receive the man in one week, whom it had deemed unworthy the week before, is an objection which arises from mistaking the *ground* upon which the power of expelling in this case stands founded. It is not for punishment: that belongs to the King's *criminal courts*. It is not for the dignity or pride of the House, which has *no negative*, but *must* receive such persons as, being eligible by the *law of the land*, are sent there by the *body of the people*. But it is for the security of the electors: not to compel them *to make a change*; but to enable them, if they think fit, *to make a better choice*. By the expulsion, the electors are released from the choice which they had *unwarily* made: and they return to the election, free from every restraint, except what had been imposed upon them by the *law of the land*; the common-law, founded in reason, and confirmed by usage; or the statute-law, enacted by general consent. By going further, we depart from *that law*; we wander without a *guide*, and without *restraint*; we run wild in the pursuit of *we know not what*; every step we take involves us in *greater evil*; we grow *wise*, and *repent too late*, when we can find no remedy.

## C H A P. VI.

*Difference between Expulsion and Disability marked in the Language of Parliament.—Argument drawn from expelled Members not having been re-elected, answered.—Mr. Walpole's Case, 1711, considered at large — Mr. Shane's Case at Thetford.—Mr. Woolaston's Case.—Cases of Malden and Bedford.—Mr. Wilkes's Case not one of those in which Conviction in the King's Courts works an Incapacity of holding Offices of Trust.*

Difference  
between Ex-  
pulsion and  
Disability  
marked in  
the Lan-  
guage of  
Parliament.

IT appears, I hope, from what I have said already, that the power of disabling by express sentence is not founded either in reason or precedent; that it is inconsistent with, and destructive of, the great principles of our constitution; and that it was not possible, in the nature of things, that it could have existed in the beginning of our Parliaments. One might reasonably hope that it would not be disputed, that what *cannot be done* by the express resolution of the House for that purpose, will *still less pass* by implication, and as the consequence of a much milder sentence. This, however, is disputed; and it is still contended, that, in the *language* and according to the *law and custom of Parliament*, expulsion implies a disability.

In support of this assertion, I expected a great deal of learning, and I have not been disappointed; but it is, *for the most part*, learning which does not apply to the question. Let men write ever so voluminously on the judicature of the House of Commons in matters of election, on its exclusive jurisdiction *if they think proper*, on its power of punishing its own Members; all they can say on these points will never prove that the consequence, contained in the assertion just mentioned, is well and truly drawn; either according to the common sense and meaning of the words, or according to their legal meaning, or as they have been always understood in a parliamentary sense.

The different meaning of the words *expulsion* and *disability*, in a parliamentary sense, and the difference in the degree of punishment inflicted under those words, will manifestly appear to the Reader, if he will take the trouble of looking back to the fourth chapter. There he will see, that in Arthur Hall's case, which may be a good precedent for the *forms* of Parliament, though a very bad one for other purposes, the disabling part of the sentence was much *more than was necessary*, if the bare removal would have involved the rest. Sir Edmund Sawyer, Taylor, Benson, Sir Edward Deering, and Trelawny, are not only expelled, but, *by additional words* in the sentence, disabled to sit. Much in the same times we find,  
that

that in some instances the House stopped at expulsion. For, 13 Feb. 1606, Sir Christopher Pigott; 16 Feb. 1620, Mr. Shepherd; 21 Mar. 1620, Sir Ro. Floyd; 23 Apr. 1621, Sir J. Bennett; were expelled, but not disabled.

How shall we account for these distinctions, so strongly marked in these sentences? Why were some expelled? others disabled? Where disability was intended, why was it thought unsafe to rest it on the sentence of expulsion? Why was the House so guarded in its proceedings, as to make disability, by another resolution, a *part of the sentence*, even where the expulsion had been already ordered, as it was in Sir Edmund Sawyer's and Benson's cases? Reflecting in this manner on these proceedings, I can no more persuade myself, that in the language of Parliament expulsion implies disability, than that in the language of the law *hanging* for high-treason implies drawing and quartering, and all the other parts of the judgment for that offence. Nor do I think it more extraordinary, that an expelled Member should return to the House, if his constituents are pleased to re-elect him, than that a criminal transported for *seven years* should presume to return home at the expiration of that term, instead of staying abroad *for life*.

Argument  
drawn from  
expelled  
Members  
not having  
been re-  
elected, an-  
swered.

When this assertion is to be defended upon the law and custom of Parliament, one naturally expects a long string of cases, adjudged in temperate times, and strictly applicable to the matter in question. How is one surprized to find the principal stand made at one poor piece of *negative evidence*! We are told, that there is not an instance of an expelled Member being re-elected, till Mr. Walpole's case in 1711. I shall shew presently, that Mr. Woolaston was expelled and re-elected in 1698. Others have shewn the same thing of Sir William Pennymen and Mr. Holborne. But if neither they, nor Mr. Walpole, nor Mr. Wilkes, nor any other expelled Member, had ever been re-elected, all this would not have amounted to a proof, that the electors might not have chose them if they had thought fit.

It was not indeed to be expected, that they would elect men loaded with the censure of the House of Commons. If we find them inclined to do so *now*, their never having done so *before* does not conclude against their right of doing it when they please. We may, indeed, be driven to confess a disagreeable truth: that the House of Commons has *no longer* that authority over the minds of the people, which it had *formerly*. By authority, I do not mean *external power*, and that strength which *compels* obedience. But I mean that influence over the minds and opinions of a *free* people, which can result only from full and perfect evidence, of *dignity* in the debates of the House, *prudence* in its counsels, *integrity* in its judgments, *impartiality* and *independence* in its general conduct. Authority  
founded



founded on *these grounds* stamps a venerable character on the proceedings of the House, whose censure becomes a load sufficient to sink any candidate. That this censure is less weighty *now* than it was formerly, is undoubtedly true.

The cause of this unhappy change ought to be discovered. Some impute it to the levity and wantonness of the common people, to their love of riot, to the want of subordination, and to the leveling spirit which is now said to be so high among them. Others say, and I am afraid with truth, that the common people do but look up to the great, and follow their example; that, accustomed to see themselves *bought in one market*, they naturally enough are inclined to think themselves *sold in another*; that they have no occasion to level the great, who sufficiently *lower themselves*, by the constant gratification of the same sordid passions, which they first raise in others, and then condemn.

In the next place, the case of Mr. Walpole, in 1711, is much insisted on. He was expelled, and then re-elected. And, 6 March, the House resolved, that, having been expelled *for the crimes there mentioned*, he was and is incapable of being a Member to serve in that Parliament. This is said to be an adjudged case in point, and the law was declared *then* as it has lately been in Mr. Wilkes's case.

This unhappy precedent has been one cause of all our troubles. A searcher for precedents is too apt to content himself with *any case*, if it does but answer his present purpose in part of its circumstances, and to overlook those which make against it. Let us therefore consider how far this precedent applies to the question now before us.

In the first place, without admitting the declaration of the House in Mr. Walpole's case to have been legal, I say that it is not at all similar to that which was made in Mr. Wilkes's. The first was a *particular* declaration, that a Member for offences *there mentioned*, and *imprisoned* for them, was and is incapable of being re-elected into that Parliament. The other is *general*, and is the first instance of a declaration of incapacity reaching *all Members* expelled for *any offence*, or for *any cause*, and without any *other collateral circumstances* whatever. When a modern proceeding is to *acquire its authority* from a precedent set in former times, that precedent ought to be exactly in point.

In the next place, are we to take Mr. Walpole's case as one in which it has been adjudged, that an expulsion implies an incapacity? If we are, we shall have the misfortune of being abandoned just where we stand most in need of it. For, unless it went much further, and brought into the House *the second on the poll*, as duly elected, and having a right to sit, it will not answer our purpose.

Unluckily,

Unluckily, and as if this precedent, when fully opened and understood, was destined to condemn our modern proceedings, the petitioners made *this, their claim*, but failed in it. They alledged, that Mr. Taylor, the *opponent* of Mr. Walpole, and *next on the poll*, was elected; but that the Mayor had returned Mr. Walpole, *though expelled*. The whole matter was before the House; and the claim of the petitioners hung upon this chain: Mr. Walpole was expelled in this Parliament; therefore he was incapable of being elected; therefore Mr. Taylor was duly elected, and ought to sit. If it had at that time been understood to be *law*, that incapacity necessarily followed the expulsion, the consequences would have been fair from the first, and the claim of the petitioners would have been good; that the majority, voting for a man incapable *by law* of being elected, threw away their votes, and the second on the poll ought to sit. The House, therefore, could not have been *so unjust* to Mr. Taylor, as to issue a new writ: he *must* have been declared duly elected.

No tenderness of the House, no relaxation of its rigour towards the electors, could have induced it to deal *so unjustly* by Mr. Taylor. That clemency is *criminal*, which, in tenderness to one set of men, deals unjustly by another. If the *law* was as the House *declared* it, the seat in the House was the right of Mr. Taylor. The law of the land, *that part of it* upon which the writers in support of the late decision lay the greatest stress, the *law of Parliament*, gave it him. The conclusion drawn in his favour was such as the House was *bound* not to trifle with; for it gave him the *same right* to his seat, as they had *to sit in theirs*, and judge upon his election.

Besides, we know from the history of the time which way the good wishes of the House inclined. The opponent of Mr. Walpole would have been an acceptable man to the majority, if it had been possible, *by any means*, to have brought him within the bar. His being left in the lobby, turns this precedent into one of those by which we learn what a *supreme court*, acting without control, *cannot do*.

It is ridiculous to hear it argued, that, though the incapacity was *legal*, it was not *known* till after the declaration made by the House. The writ for the new election published all that was wanting to be *made known* to the electors; the expulsion of Mr. Walpole. If the consequential incapacity was *legal*, the electors are *presumed* and are *bound* to know it. Their ancestors must have known it *from the earliest times*. Those who voted for Mr. Taylor alledged, that they *did know it*, and made their claim upon it. Were they to lose the *benefit of the law* upon the *supposed* ignorance of the other side? He that confesses it was not known, must confess also, that it derived its being, not from the *law of the land*, but from the *declaration* of the House of Commons.

I will

I will close what I have to say on this head with an extract from a pamphlet lately published on the other side. The Author of the Answer to the Question Stated maintains, "That it is the known and established law of Parliament, that the expulsion of any Member of the House of Commons creates in him an incapacity of being re-elected; that any votes given to him at a subsequent election are, in consequence of such incapacity, null and void; and that any other candidate, who, except the person rendered incapable, has the greatest number of votes, ought to be the sitting Member." Now the refusal of the House of Commons to vote Mr. Taylor duly elected is a direct denial of one or more of the propositions contained in this doctrine. Whether *all these propositions* were denied, or *only one of them*, is a matter of perfect indifference to the present question. For the denial of *any one of them* destroys the chain, condemns the doctrine, and renders Mr. Walpole's case no precedent for Mr. Wilkes's.

It hurts one; it tends to impress the most unfavourable opinion of the human heart, when we see a gross misapplication of those talents which might have been directed to the good of mankind. This same author, in the very next page, hunts after excuses, and labours in vain to reconcile the judgment of the House upon the right of Mr. Taylor, with the declaration made of the incapacity of Mr. Walpole. He tells us, "that the legal meaning of the word *expulsion* was not *precisely* fixed; that the House *thought proper to fix it*, and explicitly to declare the full consequences of its former vote, before they suffered those consequences to take effect." Where then was this *known and established* law of Parliament? or how shall we fix these inconsistent reasonings of this author, these conclusions which fight with and destroy each other?

It follows, therefore, from the act of the House in issuing a new writ, instead of admitting Mr. Taylor, that the House was not satisfied in the *legality* of that consequence which it pretended to declare; and that it abhorred the thought of giving effect to that declaration, by establishing as sitting Member Mr. Taylor, who had a confessed minority on the poll. The precedent, far from being a ground for the late proceedings, condemns them absolutely; and forces upon us a disagreeable comparison of the moderation of those times with the intemperance of these we live in.

But, if this precedent had been well and compleatly applicable to the present case, still it is but *one* precedent, arising in a *suspicious* time, upon a *change* of administration, in a *new* Parliament holding a *different language*, and pursuing a *different system*, from that which went before it. The precedent itself was *new*, the *first* declaration of its kind, and the sufferer under it was *one of the first men* of an *obnoxious, vanquished* party. These  
are



are considerations which might reasonably induce us to look to that precedent with an uncommon degree of diffidence.

We all know, that this proceeding against Mr. Walpole was thought by many persons a hard and unjustifiable measure. Their objections were, that, instead of being a declaration of the law, it was a second punishment for the same offence. I can easily conceive, that it was better defended at that time, than it has been lately by the author of the *Serious Considerations*. He maintains it to be a declaration of the law, and p. 32.  
 “ rejects all consequences from the act of any court, which are directly  
 “ opposite to, and contradict the words of that court, in pronouncing the  
 “ judgment. He tells us, that whatever deductions may be *logically* made  
 “ from that proceeding, the *fact* is, that the House of Commons, in *express*  
 “ words, declared, that Mr. Walpole not only is now, but *was* at the  
 “ time of the election, incapable.” If inserting the word *was* into a resolution will make it *declaratory*, and give it full effect as the act of a court *competent* to declare the law, and bind the subject by such declaration, the Lord have mercy upon us! there is an end of the *law of the land*: the House of Commons, in matters of election and privilege, and in the conduct of its own Members, and the other supreme courts in their several jurisdictions, are all of them masters of their own language, and can word their resolutions so as to declare the law as they may be inclined to make it. But if, on the other hand, we are at liberty to dispute the *legality* of such declarations, I do not see why we may not draw arguments in this case, as well as in any other, from the inconsistency of the proceedings, in its various parts, clashing with and contradicting each other?

I have never heard but of one precedent, brought at that time to justify and support the declaration of Mr. Walpole's incapacity. That was the case of Mr. Sloane of Thetford.

Mr. Sloane's  
Case at  
Thetford.

26 Jan. 1699, upon hearing a petition against him, complaining of an undue election and return, he was adjudged to have acted in breach of the *late act of Parliament*, 7 W. III. c. 4. for preventing expences in elections, and therefore not duly elected. The election was declared void: a new writ issued; and he was re-elected.

19 Feb. the House resolved to consider that act, and ordered Mr. Sloane to attend in his place.

21 Feb. Mr. Soame's petition was presented, setting forth the former proceedings against Mr. Sloane, and his being *again* returned, to the prejudice of the petitioner, who was duly elected, Mr. Sloane being *incapacitated*. This petition is ordered to lie on the table till the act shall be considered.

2 March, the House having read the act, resolved, that Mr. Sloane was *incapable* of serving in *that Parliament* for *that borough*. The petition

of Mr. Soame was *referred* to the committee: but no report appears to have been made upon it.

This precedent appears pretty obviously inapplicable, both to Mr. Walpole's case and Mr. Wilkes's. For Mr. Sloane's case differed essentially from theirs, in many instances.

First, Mr. Sloane had been adjudged *not duly elected*, and his election had been declared void: but he had *not been expelled*. The question before us being upon the consequences of an expulsion, if he was not expelled, no circumstances in his case, even if they were more similar than they are, can be applied to that question.

Secondly, the resolution in his case differs, in all its circumstances, from that which was taken in theirs. In his, it is a *particular restraint*, grounded upon *an act of Parliament*, in a *particular case* there provided for, and limited to *one borough*. In theirs, it is a general declaration of incapacity, as the necessary consequence of an expulsion upon the *custom* or *common law* of Parliament, extending to every place in the kingdom.

Thirdly, so far as it affected Mr. Sloane, it was an illegal judgment; and therefore not fit to be applied to any case whatever. For, though it was grounded upon a particular act of Parliament, it carried the penalty far beyond the limits prescribed by that act. *There*, in express words, the incapacity of sitting is confined to that election at which the corrupt practices have been made use of: but the House extended it to *all elections* which might happen at that place, during the continuance of that Parliament.

Lastly, I cannot but observe, that, if this precedent had been applicable to Mr. Walpole's case, it was not so to Mr. Wilkes: for, after the declaration of Mr. Sloane's incapacity, Mr. Soame was left in the lobby *to wait for Mr. Taylor*, instead of *accompanying Mr. Lutterell* into the House of Commons.

Mr. Walpole quoted two precedents in his favour; Sir Robert Sawyer's case, and Mr. Woolaston's; who, he said, had both of them been expelled, and were re-elected. It has been since found, that the interval of time between Sir Robert Sawyer's expulsion and the dissolution of the Parliament was too short to admit his re-election. I shall therefore throw his case out of the question. But Mr. Woolaston's was strong in favour of Mr. Walpole; and proves, beyond a doubt, that the House of Commons was not then of opinion, that expelled Members were incapable of being elected.

20 Feb. 1698, Mr. Woolaston was *expelled*, for having acted as a receiver of the duties on houses and windows, while he was a Member of the House of Commons, contrary to the express provisions of the act

5 & 6 W. & M. He was afterwards re-elected, and sat in the same Parliament.

It has been argued, that there was an inaccuracy in the language; that, though Mr. Woolaston was directed to be expelled, he was not considered as a criminal; that he was only under a temporary incapacity, as holding an office not tenable with a seat in parliament; and became well qualified afterwards, by the surrender of that office. *Then*, the very thing is *taken for granted*, which ought to be *proved*; and the admission of Mr. Woolaston, after his re-election, is to pass as proof; not that the House was *bound* to receive, but that the House did not consider him as guilty of an offence. But, I insist, that there was no inaccuracy in the language; that Mr. Woolaston was considered as an offender, and for that reason expelled.

Serious  
Considerations,  
p. 23.

The act *forbids* any Member to accept the office. I have no idea of criminality, of an offence against law, if that man is not a criminal who acts in direct contradiction to an act of Parliament. Whatever objection might be made to treating as offenders those who mean to vacate their seats by the acceptance of the office, there can be no doubt, that to accept, or continue to hold, the office, and at the same time sit as a Member of the House of Commons, is an offence contrary to the express words and manifest intention of that act. Mr. Woolaston did this, and therefore his expulsion must have been inflicted for punishment.

Mr. Woolaston surrendered the office. He was *then* re-elected and admitted to sit. But this surrender, timely as it may be thought by some, was surely much too late, and could not take off the crime *already committed*, by presuming to act as the officer while he continued a Member. It was equally insufficient to take off the consequences of the punishment inflicted for that crime. And if incapacity had been one of those consequences, the House itself could not have released it; Mr. Woolaston could not have been admitted to his seat.

Therefore, from the *common sense* and *meaning* of the words; from this known truth, that the *less* cannot include the *greater*; from the *language*, in which the several punishments of expulsion and disability have been inflicted, marking very distinctly the intention of the House, whether it was to *confine* the punishment to expulsion, or *extend* it to disability; from *Mr. Woolaston's* being admitted to sit after his expulsion; and from *Mr. Taylor's* not being admitted upon his contest with Mr. Walpole; it appears clearly, that our ancestors did not understand the same thing by those very different words, nor were ever *really* of opinion that an incapacity was the necessary and implied consequence of an expulsion. Still less did they hold, that, where the first on the poll had been expelled, his



incapacity was *legal*, and the second on the poll ought to be admitted to sit as duly elected.

Cases of Malden and Bedford.  
The cases of Malden and Bedford have been much relied on. In 1715, Serjeant Comyns having refused to take the oath of qualification required by *act of Parliament*, at his election for Malden, his election was declared void; and the petitioner, who was next on the poll, adjudged duly elected. In 1727, Mr. Ongley petitioned for Bedford, and had the majority on the poll: but, it appearing that he had an office in the customs, which by *act of Parliament* rendered him incapable of being elected, the House resolved, that he was incapable of claiming to sit in Parliament. It is a matter of perfect indifference to me, whether these precedents are quoted as authorities for rendering Mr. Wilkes incapable, or as proofs that, upon the supposition of Mr. Wilkes's *legal* incapacity, the law of Parliament was, that his competitor, Mr. Lutterell, was duly elected: for, in my opinion, they can be applied to neither. This I am sure of, that a proceeding justifiable upon the ground of a *legal* incapacity, is no good precedent for the *like* proceeding in a case where the incapacity is *not legal*. The disqualifications of Mr. Comyns and Mr. Ongley were *recent*, but they were most strictly legal; created by an *act of Parliament*, and therefore *supposed* known to the electors, and binding to them. Mr. Wilkes's disqualification was *also recent*; but it was supported by *no custom*, nor by any *statute*; deriving its authority from a resolution of the House of Commons *only*, and that resolution taken *extrajudicially*, without hearing the parties. The electors therefore were not *supposed* to know it, nor *bound* to acknowledge its authority.

Answer to the Question Stated, P. 14.  
Mr. Wilkes's Case not one of those in which Conviction in the King's Courts works an Incapacity of Holding Offices of Trust.

The case in which the consequence set up would be best supported is, where a Member has been expelled for any of those crimes, the punishment of which, in any of the King's criminal courts, would be incapacity of holding any office, civil or military. For it might seem strange, that a man, who, by his conviction in the King's criminal courts, is rendered incapable of undertaking the most trifling publick trust, should, after conviction in the House of Commons, be admitted to act in the most important trust, a representative in Parliament. The argument from analogy in this case, and the reasonableness of the objection, would have great weight. But, on the other hand, *even in this case*, the danger of *innovation*, in a very *tender* part of the constitution, would be very sensibly felt, and check the progress. Without, therefore, determining this point, it is sufficient to observe, that, even if this case were determined in favour of the doctrine set up, it would do no service in Mr. Wilkes's case: for they greatly differ. His crimes are not such as, upon conviction, any-where render him incapable of holding any office of trust whatever. He might even become one of the first officers of state, if the Ministry should lay  
aside

aside their recent disposition to persecution, re-assume their former good-humour and partiality towards Mr. Wilkes, and think proper to re-admit him into their corps.

It appears therefore, that the effect of an expulsion is to be, what the common sense and meaning of the word imports, an expulsion, not a disability. The causes of the expulsion may be such as render the Member *ineligible by law*; some of those which I have already mentioned, as the only disqualifications known in our common or statute-law. In that case, the disqualification does not follow as the natural and necessary consequence of the expulsion: the Member is not disabled, *because* he is expelled; but he is *expelled*, because he is incapable of sitting. If the House intends to go further, why does it not say so, and disable *if it can*? It is not to be presumed, that it would chuse to make use of an expression which, neither in parliamentary language, nor in any other, conveys its meaning; and inflicting punishment, to *one degree only*, by the *words* of the sentence, cannot be understood to inflict it to a *much greater degree* by *implication* and *inference*.

## C H A P. VII.

*Other Arguments for the Incapacity of Mr. Wilkes considered—that he might have been sentenced to the Pillory—that he was a Prisoner in Execution—that the Judgment of the House is the Law of the Land.—Observations on those Parts of the Serious Considerations which derive the Authority of Parliamentary Disabilities from the Resolutions of the House only—and on those Parts of the Answer to the Question Stated which maintain a Power in the House to declare the Law differently at different Times.*

**I**T may be proper here to take notice of some arguments which are out of the common line; and, abandoning the ground taken by the House of Commons, start fresh objections to Mr. Wilkes's capacity of being elected.

Other Arguments for the Incapacity of Mr. Wilkes considered.

It has been urged, that his crimes were of that nature, for which he *might* have been sentenced to the pillory; and that, by such sentence, he *would* have been infamous, and *could not* have been received as a juror or witness, and consequently *ought not* to be admitted as a Member of Parliament. The answer to this argument is very easy. Without entering into the consideration of the *supposed consequence* of a punishment which was *not* ordered, I will stop at the Fact. The court of King's-bench *did*

*did not* sentence Mr. Wilkes to the pillory. Lord Coke advises the Justices of the peace, "for that the judgment of the pillory doth make the delinquent infamous, they should be well advised before they give it. Fine and imprisonment, for offences fineable by them, is a fair and sure way." The Court of King's-bench has been thus cautious. It has not sentenced Mr. Wilkes to the pillory. The fine is perhaps higher: and the imprisonment longer, on account of the punishment of the pillory being omitted. Those who use this argument have so little of the caution recommended by Lord Coke, and indeed so little humanity, as to wish to add all the consequences of that punishment which the Court of King's-bench, perhaps on account of those consequences, did not think proper to inflict.

P. 16. The author of the *Serious Considerations* has given us another species of disability, which had escaped the enquiries of all the learned men who went before him. He tells us, that persons *in execution at the time of their election* are ineligible by the the *resolutions* of the House of Commons: and he quotes Sir Thomas Monke's case, 24 March 1625. The author of the *Case Considered*, asserts the same ineligibility, quotes another case, Mr. Coningsby's, 22 March 1661, and in a note gives us a reason for it, "because, being in execution, he is notailable, and therefore *cannot attend*."

Observations on those Parts of the *Serious Considerations* which derive the Authority of Parliamentary Disabilities from the Resolutions of the House only.

P. 29.

These writers appear to have had different designs. One, avowedly to vest in the House of Commons a power of giving the law by *its own resolutions only*: the other, to lay before us *another ground* on which Mr. Wilkes was ineligible. To the first, I shall have something to say hereafter: my attention is drawn by the plan of this enquiry to the latter at present, who, conscious that *two cases* will not prove a *custom*, more modestly offers a reason in support of the doctrine he contends for. This reason, *obvious* as he thinks it, has occurred to no writer before him. I know not whether I am to say, that it *escaped* the vigilance of the House of Commons, or that it was *rejected* by them. It certainly *offered* itself to the consideration of the House in the much debated precedent of Mr. Walpole, whose imprisonment was made one of the grounds for the declaration of his incapacity; but it was *not now accepted*. The declaration of Mr. Wilkes's incapacity rests *singly* on his expulsion.

I will now consider this new species of ineligibility on the fair footing on which the author of the *Case Considered* has been pleased to put it, its reasonableness, and particularly on that ground of reason which he thinks so obvious.

Men may be in execution either on civil or criminal suits. In the first case, is the author sure that the member would not be entitled to *privilege of person*? I see the hardship, and lament as much as any man, that there is *so little* privilege against the Crown and *so much* against the subject:



but I am yet to learn that the hardship is greater in this case, than in any other, where the plaintiff is barred by privilege of Parliament from suing the defendant to execution on his person.

In the next place, if there is no such privilege, how does the reason given, "that the Member is unable to attend," hold in this case more than in that of persons employed abroad in the King's service, as Embassadors and Commanders of his forces. The one is at all times a very honourable cause of absence; the other is in many instances, but certainly not in all, a shameful one. But there is *the same incapacity* of attendance in *both cases*. It is also *temporary in both*; but with this very considerable difference. The prisoner in execution on a civil suit, has it so far in his power to put an end to *his incapacity* that it depends on *himself alone*. He may pay his debt, and attend in his place. The King's Officer cannot put an end to *his incapacity*, without the *consent* of the Crown. Embassadors and Commanders of the King's forces cannot desert their posts. The Crown therefore *can debar* the people of their Representatives, in the case I have mentioned, as long as it pleases: but the plaintiff *must accept* payment of the debt, whenever it is tendered to him,

Let me suppose this done, the Member who was lately in execution for debt released from his imprisonment, and attending in his place the first day of the session. He has voted for the Speaker, taken the oaths, and delivered in his qualification. Our author, if in Parliament, takes the objection. He is *too fair* to rest upon precedent: he *condescends* to reason. He argues against continuing this gentleman a Member because, as he was ineligible at the time of his election, his election must be void. This conclusion cannot be denied: and the only difficulty remaining with our author is to prove the ineligibility at the time of the election. He proves it thus; he was at that time in execution for debt, and *therefore* incapable of attending. Though the Member should get up in his place, and say *here I am*; our author doubtless expects that his argument should hold good, that the House should *have eyes but see not, ears but hear not*, and very *gravely* resolve, that the Member who has spoke in his place *is not there*, and *cannot* be there, and declare his election void because of the *impossibility* of his attendance.

This I think is decisive against the reason given by the author, in a case where the prisoner is in execution *for debt*. It is equally so *in some cases* where the imprisonment is on a criminal prosecution. It will be proper just to state them, because the assertion is general, and extends to *all prisoners in execution*. Suppose the term of the imprisonment so near expiring that the prisoner would be at liberty before the return of the writ; or that he is to continue in prison only till security for the good behaviour is given, or a fine paid. It is clear that in all these cases the incapacity of attending  
may

may be compleatly removed by the personal appearance of the Member : and consequently, that if *all prisoners* in execution on a criminal prosecution are ineligible, it must be for some better reason than that which is now before us.

Here I might leave this matter till I come to the other writer, who roundly asserts the resolution of the House *sufficient* to create this or any other species of disability whatever. But when I see a writer attempting to increase the number of incapacities, adding to the lists in our law-books, departing from *their authority* upon *speculation* and what he thinks *reasonable ground*, I must follow him a little into the consequences of his doctrine, that, while he looks on one side to the dignity of the House of Commons, he may not split on an infinite shoal of rocks which lie on the other side, not the less dangerous for being a little under water. Does he mean to say, that by the law of Parliament, in which no grace and favour can intervene, if any man, upon a malicious prosecution, is convicted of any of those offences of which imprisonment is the ordinary punishment, he shall *therefore* be incapable of being elected into Parliament? that, upon the same principle, if a Member is imprisoned for any such offence, he shall be expelled? and, if expelled, he shall be incapable of being re-elected into that Parliament? I need not suppose that prosecution a trick of state, a device of the Minister to get rid of an enemy; because the reader goes before me, and sees a thousand tricks and devices of that sort. But has the author considered, how *likely* it is to arise upon a competition of interest in every place in which there may be a contest? has he well weighed the *temptation* it suggests to a rival in the heat of an election, or to one who after that election has been decided against him, is to reap the benefit, not only of the *vacancy* created by the imprisonment and expulsion of the Member, but of the *incapacity* of that man who at the preceding contest had been found to have the most powerful interest?

Has he considered the *offences* for which the courts of law may inflict imprisonment? Whose conduct in life has been so perfectly pure and chaste as to bear the strict inquisition suggested by the worst of passions? Let him reflect that few of those offences are cognizable *only* in the King's superior courts; they are open to the jurisdiction of Justices of the peace in their several counties and corporations. I will instance only one case. To hold up a cane in anger, where the most provoking but artful insolence and the most insidious malice have united, at the same time to *insult* and to *insnare*, is in the eye of the law an assault: and the court where the offence is tried *may imprison* upon conviction.

If I found this the established *custom* of Parliament, I should admit *that custom* to be a *law*, and should not be either so trifling or so presumptuous as to dispute against it. But as it stands only on one or two cases, I deny

I deny their authority sufficient to make a custom. In this respect this writer and I do not seem to differ: for he attempts to justify the doctrine upon the reasonableness of it. But, till I hear more cases in point, so as to be borne down by their number; or a much better reason than what has been assigned by this writer; I shall conclude, that being a prisoner in execution does not render a man ineligible to Parliament.

I must observe, however, that if this doctrine were good, and imprisonment in execution were a *legal ground* of incapacity, still it would not follow, that Mr. Wilkes was *therefore* ineligible. For the House did not think proper to go upon that ground. The imprisonment is one ground of the expulsion: but the expulsion is the only ground of incapacity *declared* by the House of Commons, and *made known* to the electors; and cannot be helped out by the imprisonment, which the House of Commons did not publish to them. Upon the argument, therefore, of all the writers on that side of the question, who contend that the writ published the incapacity of Mr. Wilkes; *this cause* of ineligibility, *not being made known* by that writ, could not operate so as to render void and thrown away the votes tendered for Mr. Wilkes, and to establish Mr. Lutterell the *lawful Member* for the county of Middlesex.

It was found necessary, very early in the disputes on this matter, to lay it down, that the decision of the House of Commons was strictly *legal*, because it was a declaration of the *law* by a *supreme court*, from whence there lies no appeal, in a matter *competent* to the jurisdiction of that court. The same thing might be said, *with equal weight*, if the Lords, in their supreme and uncontrollable judicature, were now to declare, that the eldest son is not his father's heir. The same answer might be given to both; and the right distinctions taken between *making* the law and *declaring* it, assuming those powers which are not given *under pretence* of exercising those which are. The fallacy of this doctrine is easily detected. The *exposition* of the law by any court in a case competent to its jurisdiction, be it good or bad, must have the *force* and *effect* of law, *so far* as to be binding on all persons concerned, and will continue in force till corrected by some superior power. But, whether that exposition was just or unjust, whether it was according to law or contrary to it, whether it ought to stand good or be corrected, are questions open to our discussion, and fit to be freely canvassed without prejudice from the judgment already given.

The writers in support of that decision are well disciplined, take the word of command very readily, and follow their leader where-ever he thinks proper to march them. It is the *favourite point* with the author of the Serious Considerations, and what he most labours, that all incapacities shall *derive their authority* from the resolutions of the House of Commons. With this view, the case of Sir Thomas Monke is not



P. 16.

quoted by him any otherwise than as a *precedent* of one description of men, among others, disabled by *resolutions* of the House of Commons. This writer will be found to stand very *forward* in this line; others have been *modest*, and *rather shy* than otherwise; but none have *dared* to give up this ground. The gallant author of the Answer to the Question Stated out-steps them all, and bravely avows, that the law of election may be *varied from time to time* by the *resolutions* of the House of Commons. It will be proper to attend these writers a little in the examination of this doctrine, which, if sound and good, not only warrants the declaration of the law in Mr. Wilkes's case, but precludes us from examining that or any other declaration made, or to be made hereafter, in any other case.

If the people were not uneasy enough already, one would almost think that the design of these writers was to excite alarms, instead of quieting them. For, every extravagant *exertion of power* that can be found in the history of former Parliaments, every thing that can excite *terror*, or move *contempt*, is laid before the publick, with an avowal, that, *because it has been done* by the House of Commons, it is *therefore the law of the land*.

P. 10.

All our law-books agree, that a minor is ineligible at common-law: but that law which binds our other courts of justice could not bind the House of Commons. The author of the Serious Considerations tells us, that, before the act 7 & 8 W. III. the contrary practice *universally* took place; and quotes an instance of a minor, admitted to be such by his counsel, declared duly elected, 16 Dec. 1690. Now, the incapacity was just the same *before* the statute 7 & 8 W. III. as it was after it. That statute does but *affirm* the common-law, and enforce it by a penalty on the minor, if he presume to sit. But the conclusion of this writer sets the House of Commons free from the shackles of the common-law; and tells us, "that disabilities by *the common-law* do not always act as such by *the law of Parliament*; and of this difference the House of Commons *are the sole judges*."

P. 29.

In the case just quoted, the House *dispensed* with a disability which existed by the common-law: in another, it *created* one without any law to support it. And this case is quoted by the same writer, with the same view, that qualifications and incapacities may depend upon the resolutions of the House. The disability of popish recusant convicts could not exist by common-law; for the offence itself is created by statute. There could therefore be no such disability till enacted by Parliament. But, before any act passed for this purpose, the House disabled Sir Thomas Strickland, a person convicted of popish recusancy, by *its resolution*, 6 Mar. 1676. By the act 3 Jac. popish recusant convicts were subjected to many disabilities; but were left capable of serving in Parliament. This might be thought a strange deficiency in that act; and, in 1676, the House presumed to supply

supply it by its own resolution, disabling Sir Thomas Strickland. But, in the very next year, the Legislature would not permit the disability of popish recusant convicts to rest on the authority of that resolution; but passed an act for that purpose.

Upon the same principle, and with the same design, this writer tells us, that the bar to the admission of the clergy into the House of Commons, is three resolutions taken, 13 Oct. 1553, 7 Feb. 1620, and 9 Jan. 1661, that exact number which has been found to be no bar to the admission of the Attorney-General. He has his fears, that, if we do not acquiesce under the authority of the House, in the extent in which he means to maintain it, "Mr. Horne, and many other peaceable and reverend divines, may be admitted Members in this, or some future Parliament." I may be permitted also to have *my fears*, that, if we do admit it in that extent, Mr. De Grey may be obliged to walk out of the House, and no future Attorney-General permitted to sit in it.

Eager to maintain this authority of the House, he risks the consequences of proving too much, and relies on inconsistent and contradictory judgments; Sir George Selby, Sheriff for Durham, not permitted to sit P. 13. for the County of Northumberland; Sir Edward Coke, in the same circumstances, continued a Member; the famous exclusion of the Attorney-General contradicted by the constant practice, and every day's experience, in our own times. He rests the disability of outlaws on the resolutions P. 17. of the House; though he must know, that other resolutions may be brought of their being admitted, not only to their seat, but to their privilege. Of this, the case of Mr. Fitzherbert is a famous instance; and there are several others. These have not the appearance of communications from a friendly quarter. The author seems to undermine the cause which he pretends to support, and impresses more strongly than ever the necessity of confining, within the *strict rules of law*, a judicature which has been thus abused.

The author of the Answer to the Question Stated, anxious to maintain the same doctrine, and rest the authority of all parliamentary disabilities upon the resolutions of the House, has a sovereign cure for all these inconsistencies, and a *rule of Parliament* well adapted to the removal of those difficulties apt to arise in squeamish minds, upon the view of so many contradictory judgments. At Lynn, though Mr. Walpole was, upon no ground either of common or statute-law, declared incapable, Mr. Taylor was not declared duly elected; it was a void election. At Malden, Mr. Comyns, the returned Member, being found under a known legal incapacity, the petitioner was adjudged duly elected. At Bedford, Mr. Ongley, the petitioner, being under a known legal incapacity, it was resolved, that he was incapable of claiming to sit in Parliament. The difference of the

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P. 38.

conclusion in the two last from the conclusion in the first, ought to be imputed to the *difference* in the incapacities set up in those cases as the ground of all the subsequent proceedings. But this will not answer this writer's purpose; for he wishes to maintain that, though the incapacity were *equally legal* in all these cases, the different conclusion might be *equally legal also*. For this purpose, he tells us, "that if the law of expulsion had been as clear to the burgesses of Lynn as it was to the freeholders of Middlesex, it will only prove that the law of election, *at that time*, was different from the *present law*; and that, in all cases of an incapable candidate returned, the law *then* was, that the whole election should be void. But *now* we know, that *this is not the law*. The cases of Malden and Bedford were determined on other and more just principles, and are admitted on all sides to be law."

I am sure, that I do not mean to controvert the legality of the judgments given in those two cases. The objection of a *legal incapacity* was entitled to an answer very different from that which was given upon the petition from Lynn. But I mean to mark the profligacy of the doctrine, "that the decisions of the House of Commons can render the law of election *at one time*, different from the law of election *at another*." I am sorry to confess, that the fluctuating and inconsistent judgments given by the House of Commons, at different times, give too much encouragement to the admission of this doctrine. But I deny, let the consequence be what it will, and the imputation fall where it may, *that the law of election can be varied, except by Act of Parliament*. This writer contends that they may, by the resolution of the House of Commons only. And thus every thing, reason, precedent, justice, law, are to be resolved into the *authority* of the House, which can, by its own resolution, *make and unmake* the law at pleasure, and *vary it from time to time* in such manner as to give us, poor miserable wretches, who are bound by it, a new code every twenty years. In Mr. Walpole's case, says this writer, his incapacity might *not give* a title to the second on the poll. It was law *then*, but we know *that it is not law now*.

This, indeed, is the great object of all the writers in support of the late division. With this view, they perpetually tell us of the authority and supremacy of the House; of its sole and exclusive jurisdiction; of its power to declare the law in matters of election; of the efficacy and validity of its resolutions. But this gentleman is the only writer who stands forth in broad day-light, contending for the power of the House to declare the law differently in different times. Common courts are bound to take heed to their judgments, that they be conformable to reason, law, justice, and precedent. But, according to this writer, the *transcendent jurisdiction* of the House of Commons can differ from itself as much and as often as it pleases,



pleases, in the declaration of the *same law*, correcting itself only in its *style* and *manner*, and avoiding those words which by *enacting* might give offence, and not be more effectual than those *declaratory words*, which pronounce the law “*different at one time from the law at another.*”

## C H A P. VIII.

*Observations on the Precedents in the Serious Considerations---on the Remarks made in the Answer to the Question Stated on the Case of Sir Christopher Pigott---Confession in that Answer, that the Decision on the Return determined the Merits of the Election before the Petitioners were heard.---The Argument there, that the Power of repeatedly expelling, implies the Power of disabling.---Case of Lyme Regis as strong on one Side as many of the Precedents are on the other.---State of the Dispute.*

IT will be proper now to consider, what has been further offered by these writers in support of their opinion, that an expulsion from the House of Commons implies an incapacity of being re-elected. Never did any writer make a more shameful use of precedents, than the author of the *Serious Considerations*. I have already had too much occasion to make that observation, and am now obliged to renew it. Even Arthur Hall's case is a good precedent with him: and if the House should be pleased to exercise all the powers which are in the court of King's-bench, I do not think that this writer would scruple to bring Hall's case in support of such proceedings. Observations on the Precedents in the Serious Considerations. P. 26.

The intemperance of the times in which the precedents were set, *suggests not to him* any objection to their application. He therefore carries his string of precedents to pretty late in the year 1642, till the King's standard was set up at Nottingham, “because Pym, Hampden, Holles, Glyn, names which will ever be revered by Englishmen, were then the most active and leading Members of the House of Commons.” But can any one persuade himself, that those great men were, *at that time*, either disposed, or able to check the House, in any of those strong measures? P. 28, and 29.

It is indifferent to this writer whether his precedent be the *act* of the House, or the over-ruled sense of a *minority*, or the opinion of a *particular Member*. Sir J. Leeds's case is therefore quoted as a good precedent, merely because *some Members* entertained an opinion that he ought to be rendered incapable of sitting in that Parliament; though, upon this writer's own state of it, the House was of the *founder opinion*, and refused to come into the motion made, that he might *sit no more in that Parliament*. P. 26. &

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P. 17.

Mr. Sackville's and Sir Robert Cann's cases are plainly those of *expelled* Members, not *disabled*: and in vain would this writer infer a disability in either of these cases from any part of the proceedings, illustrated as they are by Mr. Gray's Debates. In those Debates, Serjeant Maynard is said to have advised, "that Mr. Sackville should be put into such a condition "that Oates and Bedlow might have remedy against him, and that is, by "expelling him." Our author *thinks* this a short time for remedy, *unless* expulsion implied a disability, because *he believes*, the borough Mr. Sackville served for was pretty much at his command, and would have returned him again in forty-eight hours. Is not this a very extraordinary method of collecting the *law of Parliament*? It is *no act* of the House, but the *opinion* of *one Member*. That opinion neither is nor could be *on record*; but is delivered to us in the very *incomplete*, though entertaining notes of Mr. Grey, and then helpt out by the *conjectures* of this writer on the state of the interest at East Grinstead and the disposition of the electors there.

Sir Robert Cann was ordered to be *expelled*. The Speaker in pronouncing judgment says, "You are actually cut off from being a Member of "this House, and you are *no more* to be a Member of Parliament." I do not admit this writer's *grammatical* construction of these words: but I will not dispute it. For it is enough in this case to say, that it was the *duty* of the Speaker in pronouncing judgment to *confine* himself to *those words* in which he had received it. Whatever he has added, is *his own*. It may be the *comment* of Mr. Speaker: but it cannot be the *declared sense* of the House.

P. 31.

I little expected to see Mr. Walpole brought up as an evidence in support of the *legality* of the proceedings which were had against him. His acquiescence and submission is in the opinion of this writer an admission of their legality, and a confession, "that if the burgeses of Lynn had "persisted to vote for him at any election, after the resolution declaring his "incapacity, any other candidate, with any number of legal votes how- "ever few, must have been adjudged the sitting Member." Neither this writer nor I ought to pretend to know Mr. Walpole's reasons for acquiescing under the resolution of the House, and inclining rather to get his friend and relation chosen, than to risque the consequences of his own second re-election. I am however as much at liberty to have my conjectures, as that writer to have his: and *I suppose*, that Mr. Walpole was sagacious enough to foresee many consequences to follow from his perseverance, without admitting either their legality or their justice.

P. 29.

On the Remark made in the Answer to the Question

The writer of the Answer to the Question Stated seems to think that he has a precedent of great authority in the order of the House upon the dismission of Sir Christopher Pagott, for a writ to be issued for a *new choice*,  
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and in the Speaker's warrant for the choice of *another* Knight in his room and place. The attention of the reader is drawn to the words *new* and *another*, by printing them in Italics: and then the author goes on exultingly: "Such is the *clear language* of this record; it needs no comment, "and is instead of a thousand precedents to establish the full power contemplated for." Now the true reason why the author *has not given us his comment* is, because it was much safer to insinuate in the *mode of printing* than to *reason* upon this matter. For there is nothing extraordinary in the word *new*; every choice *is new* that is made at a new election, though it fall upon the *same Member*: and the word *another* is the common term constantly used in every new writ upon every vacancy. If a Member accept a place tenable with a seat in Parliament, but whereby his present seat becomes vacant, the writ directs the election of *another* Member in his room. This word therefore cannot be understood to operate to the exclusion of Sir Christopher Pigott, any more than it does every year to the exclusion of many other gentlemen, who vacate their seats by the acceptance of offices, and are re-elected.

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I did not expect to read so fair and unreserved a confession as this writer gives us, "that there was no reason to hope that the merits of the "Middlesex petition would be considered by the House of Commons "free from the influence of their former vote." This is an avowal that the decision on the return in the *absence of the parties* was conclusive on the subsequent hearing, when the freeholders were for the first time before the House. If this was not a "*mockery of justice*," I wish to know what was: and if "the former vote determined the merits of the petition," I wish to know *when* the parties were heard, and whether they *have been heard at all*. But the electors are taught what to expect in *common cases*, where there are no "*particular circumstances*," nor any "*obvious reasons*" for treating them with the *outward* appearances of decency and regard to justice. They are *then* to expect an *extrajudicial* determination, not only *prejudging* the future hearing, but made *irrevocable* in the *absence* of the parties, without the *pretence* of maintaining *even the appearance* of reserving a hearing for the parties concerned.

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As little did I expect that this same writer would in the very first step taken in the examination of a *question of right* confound power and right together, and argue, that, because the House has *the power* of doing intolerable injustice, it therefore has *a right* to do it. "The House, says "he, has the power of expelling *to-day*. It has therefore the same power "of expelling *at any future time*, unless such power be expressly limited "by law. There is no such law, nor any precedent of an acknowledged "ment by the House of any such limitation. The power of absolute "exclusion repeated *from time to time* is *equivalent* to the power of render-

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"ing incapable. Therefore a power in the House to expell *implies* and "includes a power to render incapable."

The best answer to this argument is to state to the reader what must be this writer's idea of the power of the House of Commons. First negatively : it is not that which I have been always simple enough to think it, a great power, uncontrollable in many instances by any other authority, limited however not only by the *law of the land*, but by those known laws of *natural justice* which limit and controll the greatest powers in every state. But it is a monstrous power, that can overturn the fundamental principles of justice, act against reason, repeat punishment as often as it pleases, unlimited by any thing but positive laws, or, what we have little reason to expect, its own resolutions.

I cannot take my leave of these writers without an observation on the manner in which they very ingeniously shift the question. At the first setting out, Mr. Wilkes's incapacity is said to be according to the *law and custom* of Parliament. To prove this, the Journals are well-examined ; not the *least trace* can be found of any such custom. The ground is immediately changed, and, instead of the law and custom of Parliament, deduced from a long series of uniform judgments and declarations, conformable to good sense and the principles of the common-law ; we are presented with half a dozen *straggling resolutions* for divers purposes, contrary to good sense, not warranted by any principles of the common-law, and often contradicting one another.

Now I deny that one two or three precedents make the *law of Parliament*. But, if these gentlemen think it *wise* to take the other side, I will meet them *on their own ground*, and say, that where the incapacity is *known* to be legal, and one that we are *all agreed in*, at the same time *staring in the face of all the constituents*, still the votes are not *thrown away*, nor is the *second on the poll* to be admitted as the *legal Member*.

In support of this assertion, I will quote a single precedent ; and then I am just as strong in my assertion, as my adversaries are in most of theirs. The incapacity of Returning Officers, to be elected at the places where they preside, comes I think very fully within the description I have just given.

Feb. 1727, the Mayor of Lyme Regis (Returning Officer for that place) had returned himself. Mr. Henly petitioned. Resolved, nem. con. that the Mayor was not capable of being elected, and returned. Mr. Henly's petition was however referred, as to the *complaint* that he though duly elected was not returned : and he was not adjudged *duly elected*, till he had established a *majority* above the Mayor. If these gentlemen will *still* hold, that the law of Parliament can be laid down from a *single precedent*, from only *one* resolution and judgment of the House of Commons,

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other.

Commons, I infer from this case that if the incapacity of Mr. Wilkes had been as *legal and known* as the incapacity of a Returning Officer at the place where he presides, still Mr. Lutterell ought not to have been adjudged duly elected, unless he could have proved a *majority* above Mr. Wilkes, in like manner as Mr. Henly proved one above the Mayor of Lyme. This was not done: therefore Mr. Lutterell ought not to have been adjudged duly elected.

If I have *seemed* to attend less to the writer of the Case Considered than either or any of the other writers; he will, I hope, excuse me. I believe he will find that I have either obviated or answered all his arguments. I confess, however, that there is much in that pamphlet which I mean not to answer: for there is much not at all to the purpose. It is not unusual with good writers to set up imaginary disputants, put arguments in their mouths which no man in his senses ever thought of using, and then refute them. The author of the Case Considered is excellent in this mode of writing. I beg leave therefore to enter my caveat against any advantage being taken of my silence, as if I meant to admit what I do not intend to answer; and to justify that silence by stating as clearly as I can, what I apprehend is in dispute, and what is not.

State of the  
Dispute.

The question is not, whether there is a law and custom of Parliament, and whether they are a part of the law of the land. We are *agreed* on these facts. But we contend on our side, that this law and custom are not things of *instantaneous creation*, to pass into force whenever the House of Commons shall be pleased to give them life and vigour, by resolutions worded in a *declaratory style*. The decisions of the House of Commons *must* be governed by that law and custom; but *cannot make them*: and it is not only fair, but wise and necessary, upon any declaration published by the House, to examine the authorities upon which it is supported.

Neither is there any question on the judicature of the House of Commons in matters of election, and over its own Members as such. We *admit* it, though *not in the same degree*, nor in both cases *sole and exclusive*, nor *infallible* in either case, as no human judgments are. Upon the judicature in elections the author of the Case Considered is very full and very learned. I pass over the whole of that dispute, as it appears to me not *necessary* to the decision of the present question.

The power of the House to expell its own Members is not disputed. But we deny the sufficiency of the precedents to justify the power of *disabling* by a resolution of the House only.

We deny the conclusion, that expulsion implies a disability, as *illogical, unreasonable*, and contradicted, not only by the *language*, but by the *practice* of the House.

H

Lastly,

Lastly, we close our argument by contending, that, since the disability set up is not founded in good sense and reason, nor in the law and custom of Parliament, nor in either the common or statute-law, the freeholders were *not bound* to take notice of the resolution of the House declaring such incapacity, and *did not throw* away the votes they gave for Mr. Wilkes. If we are right in this, it follows that Mr. Lutterell *is not duly elected*: and unless the judgement given in his favour be in some proper manner corrected, it will become a precedent of very dangerous consequence to the freedom of elections, which will be no longer governed by the *known laws of the land*, but by *occasional votes of one House of Parliament*.

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## C H A P. IX.

*Danger from transgressing the Bounds prescribed by Law—the Expediency of Expulsions considered.—Possibility of the Elected turning their Powers against their Constituents.—The Checks provided by our Constitution against Abuse of Power—by the Crown—or by the Representatives.—Necessity of adhering to the Law of the Land, proved from Mr. Pym's Speech, King Charles's Declaration, and Lord Chief Justice Holt's Argument.—The ill Consequences of this Decision, so far as they may affect the Conduct of Members of the House of Commons.—The Rights of Electors cannot be taken away but by Act of Parliament—how this Precedent tends to varying the Rights of Election in all Places, and particularly to extend the landed Qualification of Electors for Counties.*

Danger from  
transgressing  
the Bounds  
prescribed by  
Law.

**T**O transgress ancient limits, to venture *one step* beyond the line prescribed by law, is a proceeding big with danger. The fatal consequences of it are never sufficiently foreseen: and we are half undone, before we see half the danger.

The Expediency of Expulsions considered.

It is always humane, it is *sometimes wise*, to overlook offences. If the rigorous measure of expelling a Member is proposed, the probable consequences of it ought to be well considered. The publick looks for *wisdom* as well as justice in public proceedings. Where it is probable that the expelled Member may have interest enough with his constituents to obtain his re-election, the resolution to expell him should be taken with great caution, and upon much consideration. A reasonable man's conscience might be *prudent* in such a case. For the expulsion may lead to an unhappy question, between the dignity of the House, and the rights of the people. The re-election of the expelled Member may undoubtedly be understood,



understood, as a reversal of the censure and judgment of the House. However unpleasant it might be to submit to such disgrace, we *now* know the consequences of contending against it.

That House, which acquired its privileges, and has been *used* to claim them, as "*the undoubted birthright and inheritance of the subjects of this realm,*" is brought into a contest with its constituents: the *privileges* of the House, and that *reverence* and *respect* which every good man must wish may attend its judgments, on one side; and the *common rights* of the people on the other. The *elected* lay claim to a power of dangerous consequence to the rights of the *electors*, operating as a negative on their choice, by declaring an incapacity *not known* in our law *before such declaration*; and admitting as a Member one of the candidates who had not the majority of *such votes* as were legal *at the time of taking the poll*.

It is become almost dangerous to confess, that there were some who could have been well satisfied with keeping the vacancy open *for a time*, who wished to prevent further mischief by issuing no new writ during *that session*, and were very averse to the extrajudicial interposition of the House. Commendable as they were for temper and prudence, they have been somewhat misrepresented, and much censured. But let me ask, is there no difference between keeping the place open for *part of a session*, and filling it up for *seven years*? between resting it upon a resolution taken in pursuit of the privilege, and driving it to a formal judgment on the determination of a cause? The one might be easily rescinded by the act, or even by the acquiescence, of the House, in the *following session*. But how to reverse the other, *even in any part of the same Parliament*, is not very easy to say; and the consequences of leaving it unreversed are very manifest.

Serious Considerations,  
p. 19, 20,  
and 21.

The difference between leaving this matter on the ground of privilege, and confirming it by a legal judgment, puts me in mind of a distinction made by Lord Clarendon, between the loan of five subsidies exacted by prerogative, without any legal judgment in support of it, and the charge of ship-money, confirmed upon a solemn hearing before all the judges. I will give the observations of the Historian, in his own words: "When the  
" people heard ship-money demanded in a court of law *as a right*, and  
" found it by sworn judges of the law *adjudged* so, upon such grounds  
" and reasons as every stander-by was able to swear was *not law*, and so  
" had lost the *pleasure* and *delight* of being *kind* and *dutiful* to the King;  
" and, instead of *giving*, were *required to pay*, and by a logic that left  
" no man any thing that he might *call his own*: they no more looked  
" upon it as the case of *one man*, but the case of the kingdom; nor as an  
" imposition on them by the King, but *by the judges*, which they thought  
" themselves *bound in conscience* to the public justice not to submit to." It favours too much of wantonness; it marks a forwardness and prejudice; to

Vol. I.  
p. 69.

be restless and impatient for prosecution and punishment; to *drag* the cause to the bar before the complainants bring it, and to hurry into a kind of engagement as *parties*, where you may be afterwards to sit as *judges*.

When Mr. Walpole was re-elected, no return was called for till the electors applied to the House. When Mr. Wilkes was re-elected, not a single freeholder alledged a grievance, and came to the House for justice. What the House did was therefore *spontaneous*; and unnecessary, because *not called for*. It was very well known, that Mr. Wilkes had been from time to time re-elected; but it was not known *in form*. No petition *against his election* prayed the judgment of the House. The only petition which came, did in fact complain of the *proceedings of the House*, and pray a hearing in a cause *prejudged* in the absence of the parties. Then it was that counsel were seen at the bar, defending the *right* of Mr. Lutterell to a seat, which neither he nor his friends had *thought proper* to petition for. All this was foreseen, and the state in which we now are: and they have no reason to be ashamed of their moderation, who wished the House to *overlook* what it was *not obliged to see*, instead of bringing the evil to that pass that "*nec vitia nostra, nec remedia pati possumus.*"

Possibility of  
the Elected  
turning their  
Powers a-  
gainst their  
Constitu-  
tuents.

The fears and jealousies of the people are not ill-founded. One must forget half of what one has read in history, if one can rest satisfied, that the elected are *incapable* of turning their powers against those who chuse them. It would be ridiculous to cite cases to the contrary. They may be found in the history of every country, where any of the legislative or executive parts of government are elective.

It is a wise and a happy part of our constitution, that assigns to a select number chosen by the people, the exercise of those powers which are in the Commons of the whole kingdom. But we must not forget that *that select number* consists of *delegates*, not *principals*; trustees, vested with great authority, *not for their own benefit*, but for the benefit of *those who chuse them*. It is full as necessary to distinguish between the elected and the electors, as between the King and his people. The elected are the *creatures* of the people; the King is their *common father*: but both act under a *trust* which the constitution of this country supposes *may be abused*.

The Checks  
provided by  
our Consti-  
tution a-  
gainst Abuse  
of Power;

It is good policy to presume that great powers *will be abused*, where-ever they may be placed. The excellence of our constitution is, that there is a check on every power existing in it: and the probability of its continuance depends upon constantly maintaining those checks in their full effect and vigour. This cannot be done, unless there is a *constant* jealousy, and apprehension of abuse.

by the  
Crown,

It is a maxim in our constitution, *that the King can do no wrong*. But the same law which holds this language on the *power of the King*, looks to the *security of the subject*, and provides that, where wrong *is done* on the part

part of the Crown, the Minister who advised the measure, and the Officer who executed it, shall be answerable for the evil. There could not be a greater absurdity in any constitution, than to have provided thus against the Sovereign, and at the same time to have abandoned every thing to the will of the Representatives.

The House of Commons has the sole and supreme judicature in matters of election. How soberly, justly, and uprightly, it has exercised that judicature, let the Journals testify, and daily experience bear witness. It is *supreme* and *uncontrollable*; but the law has pointed out the rules by which it is *bound* to exercise its judgment, the same rules of common and statute-law which bind other courts in the exercise of theirs. The House of Commons is also sole judge *of its privileges*, so as to *punish* for the breach of them. It necessarily, as incidental to that judicature, has the power of *declaring* what are its privileges; but not so absolutely and arbitrarily, that whatsoever it declares to be its privilege, is to be considered as such. For the law of the land *gives*, and *limits* that privilege: the House can neither usurp a new privilege, nor give up an old one.

These are powers entrusted with the elected for the benefit of the electors, upon *special trust and confidence* that they shall not be abused. If they are, the remedy may not be in any *ordinary course*: but, however unusual may be the practice, the subject has a *right* to fly to the crown for *protection*, by virtue of that prerogative which it possesses *for the public good*.

It would be right in those who possess great and unlimited powers, to have in their constant remembrance, what was well said by Mr. Pym at the trial of Lord Strafford, and afterwards retorted by King Charles the First upon his Parliament: "The law is that which puts a difference  
" betwixt good and evil, betwixt just and unjust. If you take away the  
" law, all things will fall into confusion. Every man will be a law to  
" himself, which, in the depraved condition of human nature, must needs  
" produce many great enormities. Lust will become a law; and envy  
" will become a law; covetousness and ambition will become laws: and  
" what dictates, what decisions, such laws will produce, may be easily  
" discerned. The law is the *safeguard*, the *custody*, of all *private inter-  
ests*. Your honours, your lives, your liberties, and your estates, are in  
" the *keeping of the law*. Without this, every man hath a *like right to any  
thing*."

King Charles follows up this reasoning with something further very applicable to both Houses of Parliament: "For it is not to be imagined, that one House shall set itself free from the fetters of the law in matters *of election and privilege*; and the other not assume the like liberty in its judicature, *or appeals and writs of error*. "Without him, and against his  
" consent, the votes of either, or both Houses together, must not, could  
" not,

or by the  
Representative.

Necessity of  
adhering to  
the Law of  
the Land,  
proved from  
Mr. Pym's  
Speech, K.  
Charles's  
Declaration,  
and L. C. J.  
Holt's Ar-  
gument.



“not, should not (if he could help it, for *his subjects sake*, as well as *his own*) forbid any thing that was *enjoined by the law*, or *enjoin* any thing that was *forbidden by the law*. He doubted not, but that all his good subjects would easily discern, in what a miserable insecurity and confusion they must necessarily be, if descents might be altered, purchases avoided, assurances and conveyances cancelled, the sovereign legal authority despised and resisted, *by votes or orders of either or both Houses.*”

In the famous case of the Aylesbury men, upon the motion for an *habeas corpus*, that great and intrepid Judge Lord Chief Justice Holt delivered an argument, which ought never to be forgotten. He said, among other things, “Their imprisonment was not such as the people of England ought to be *bound by*: and it did *highly concern* the people not to be *bound by a declaration* of the House of Commons in a matter that *before was lawful*. Neither House of Parliament has a power to dispose of the *liberty or property* of the people; for that cannot be done but by the Queen, Lords, and Commons: and this is the security of our English constitution, which cannot be altered but by *act of Parliament*. The House of Commons are *judges* of their own privileges: but the *law* must also be obeyed. When subjects have a *right* to bring actions, they cannot be *slopt* but by act of Parliament: for no privilege can extend so far as to *take away a man's right*. Nothing can make a privilege, which was not so before, for the breach of which a man shall lose his right, *except an act of Parliament*. The Judges are bound to take notice of the *customs* of Parliament; for they are *part* of the law of the land, and there are the *same methods* of knowing it as the law of Westminster-Hall. It is *the law*, which gives the Queen *her prerogative*; it is *the law*, which gives *jurisdiction* to the House of Lords; and it is *the law*, which *limits the jurisdiction* of the House of Commons.”

The consequences of this Decision so far as they may affect the Conduct of Members of the House of Commons.

If these observations had been better attended to, we should not have been distracted so frequently as we have been, with the *law and custom of Parliament*, which have been too often perverted into something so vague, and so uncertain, that the writers on the laws of England are afraid to touch upon them. “*Ab omnibus querenda est, a multis ignorata, a paucis cognita.*” No man can read what Lord Coke writes on the transcendency of this law and custom, and observe the profound respect and reverence with which that learned man *affects* to treat them, and not confess, that the Chief Justice was in a merry mood, and meant to convey pretty nearly in the words of the author of the Answer to the Question Stated, “It is the distorted child of folly and indiseretion: it is a jumble of precedents for every thing, and any thing.”

Not

Not only elections ought to be free; but the members ought to be well assured, that they may debate without fear, and correspond with their constituents in perfect security. Now a member may be expelled for writing to his constituents a fair, modest, and honourable account of his own conduct. For it must be impossible to vindicate his own conduct without censuring that which he opposed. In the warmth of a debate an intemperate leader may take offence. The House may be *complaisant enough* to make the quarrel its own. The offender may be brought to the bar immediately and expelled. A free animadversion on *the worst letter* that a Secretary of State could write may be taken up by the House as a ground for expulsion. Any imprisonment for any offence, conviction for a crime for which the pillory might have been ordered, and, upon the same principle, for which sentence of imprisonment might have passed, all these are now held fit and justifiable causes of expulsion. Ample provision is made for removing from the House all troublesome Members, who are offensive to a great Leader, and disturb his rest. Incapacity for the rest of the Parliament, perhaps in the prime of their lives, in the most important part of that Parliament, is to follow as the necessary consequence of the expulsion. The severity of this new law of Parliament will be felt equally by the *electors* and elected. Their country will want the service of the expelled Members: in bad times every good man is of great value. While on the other hand, wicked and abandoned Ministers will have secured success to their desperate designs, by removing their principal opponents and intimidating the rest.

The judgment in question is confessedly not a judgment upon the *statute law*; it is not upon the *law*, nor by the *custom, of Parliament*: For the precedents, and the general course of proceedings in the House of Commons, are against it. It is not founded on the *opinion of learned men*, those sages who have left us their collections and observations on the laws of this country; nor on any *tradition* delivered down from ancient times. The circumstances of the case *taken altogether* are new; even Mr. Walpole's case differs essentially from it, and suggests strong and convincing arguments against the power of the House, *to disable* in consequence of an expulsion, and still stronger against its power to admit the *second on the poll* in consequence of such disability.

It is a most dangerous thing to allow to any House of Commons, or to any court, such latitude of construction either of the common or statute law, as may impair and diminish the rights of the electors. In other cases, that construction which *most extends* their right is *most favoured*. I have seen it laid down in our law books, that all restraints upon common right, whether by charter, bye-law, or usage, are to be strictly construed; and with regard to the right of electing to public trusts, no charter

charter nor bye-law can in any respect lessen, or confine it to a smaller number than that in which the antient law has placed it.

The Rights  
of Electors  
cannot be  
taken away  
but by Act  
of Parlia-  
ment.

No authority less than the whole Legislature can take away the *right* of a single elector. In a late instance, a *doubt* whether certain customary freeholders had a right to vote in elections of Knights of shires, was not left to be decided by a resolution of the House. An *act of Parliament* was thought necessary to declare they had not; however satisfactory might be the treatise wrote by Dr. Blackstone to prove, that the claim they set up was ill founded. They were in possession, at least in some places, and therefore considered as not fit to be removed but by act of Parliament.

How this  
Precedent  
tends to va-  
rying the  
Rights of  
Election in  
all Places,  
and particu-  
larly to ex-  
tend the  
landed Qua-  
lification of  
Electors for  
Counties.

In the present case, the electors in general are in possession of the *right* of returning whom they please, not being disqualified by the *known laws* of the land. A *new* disqualification is set up by a *vote of one House of Parliament*, not known before, *attempted* in the case of Mr. Walpole, *imperfectly executed* then, and *never acknowledged*. This is now carried into effect, and a member sits confessedly *upon a minority of votes*.

The precedent will hardly stop here; temptations will daily present themselves. The influence of the Crown, within the House and out of it, grows immensely. We do not discover that spirit of disinterestedness and independence, that firmness and virtue, so necessary to encounter this influence, and prevent its fatal effects. The time perhaps is not very distant, when we may see the most hideous monster that was ever produced; a House of Commons servile and abject to the Court, licking the dust from the feet of the Favourite, haughty, arbitrary, and tyrannical to those who gave it being.

Then the *rights* of the electors will be things to be *laughed at*. Upon the principle, that the *vote* of the House once given in a case competent to its supreme jurisdiction is the *law of the land*, which of those rights will be any longer secure? The same authority which, under *pretence* of declaring the law, may set up a disqualification not known to the law of the land, nor to be found in the history of Parliament, will play with its judicature at pleasure, and transfer the rights of election from one set of men to another as shall best answer its own purposes.

It is but one little step further, and the House may reduce the number of freeholders to the wish of a minister. Stealing above 12 *d.* is grand larceny by an act of parliament, 3 E. I. Criminal courts are as liberal as they can be in the execution of that law. If no evidence of the value is given by the prosecutor; or if that value is not fixt accurately, the judges will often recommend it to the jury, or at least tell them that they are at liberty to find the value of the things stolen under 12 *d.*; having respect to the great alteration in the value of money since the passing of that



that act. This liberality, being in favour of life, and not carried so far as to *dispense* with the law by a *positive direction*, where the value of the things stolen is *ascertained* by evidence, is very commendable.

By statute 8 H. VI. c. 7. *Forty shillings a year* in freehold lands give the freeholder *a right to vote*. Whatever restraints have been since imposed upon him, they have been imposed, not by a *resolution* of the House, but by *act of Parliament*. If this *latitude of construction* is permitted in one House only, and the competency of the House entitles its decisions upon the rights of the electors to be considered as the law of the land, have we not reason to fear that it may become a question to be decided there, whether the *forty shillings*, which give the freeholder his qualification, shall be construed according to the value of money *in the time of H. VI.* or according to its present value? Dr. Blackstone has *already* made the computation. He tells us, in his Commentaries, that *forty shillings in the time of H. VI.* are equivalent to *twenty pounds in our time*. And if a House of Commons should hereafter be inclined to put that construction upon the qualification of a freeholder, and fix it at *twenty pounds* a year, I have no doubt that there might be found more than one court lawyer to argue, from the *liberality* with which the courts of law carry into execution the act of E. I. in cases of grand larceny, from the *competency* of the House to decide upon the rights of election, and from its *supremacy*, that it was a *good judgment*, and *well founded in common law*.

Vol. I.  
p. 167.

C O N T E N T S.

C H A P. I.

*Every Man's Duty to watch over the Freedom of Elections.—State of the Contest between the House of Commons and the Freeholders of Middlesex.—How varied by passing Judgment.—The Right of the People to enquire defended, particularly upon the Principles of this Constitution.—The Plan of this Enquiry.—Answer to the Objection made on the Supremacy of the House, and its Power to declare the Law.—Necessity of adhering to the first Principles of the Constitution.* Page 1.

C H A P. II.

*Qualifications of Candidates, and their Disabilities at Common and Statute-Law. ---The Nature and Principles of those at Common-Law.--- Aliens.---Minors. ---Ideots, and Men deaf and dumb.---Persons attainted of Treason or Felony. ---Returning Officers.---The Clergy.---The Twelve Judges.---Case of the Attorney-General not eligible by special Order of the House.---Disabilities by Statute-Law.---Inference from them against the Power of the House of Commons to disable by its own Resolution.---The Power of the House limited to a Declaration of the Law.---How the Legality of the late Decision ought to have been proved.---Proper Mode of proceeding in new Cases.* Page 7.

C H A P. III.

*Expulsion does not imply an Incapacity of being re-elected, in the common Sense and Meaning of the Words.—The Purposes for which the House exercises its Power of Expulsion—for Punishment of an Offence—for the Unfitness of the Members.—The Charge against Mr. Wilkes explained, as bringing his Case under the latter Head.* Page 14.

## C H A P. IV.

*The Power of the House to disable by express Sentence, considered.—Arthur Hall's Case and Dr. Parry's rejected as bad Precedents.—The rest of the Precedents stated.—Whitlocke no Authority in this Case.—This Power not founded either in Reason or Precedent.—Particular Considerations on it when exercised for Punishment.—Impossibility of supporting it for that Purpose by any Custom of Parliament.* Page 19.

## C H A P. V.

*No Power in the House to disable for Unfitness only.—It can expel, but the Electors can re-elect.—The Consequences considered, as well where the House abuses its Power in expelling a good Man, and refuses to receive a Member legally elected, as where the Electors persevere in sending a bad Man back to Parliament.* Page 24.

## C H A P. VI.

*Difference between Expulsion and Disability marked in the Language of Parliament.—Argument drawn from expelled Members not having been re-elected, answered.—Mr. Walpole's Case, 1711, considered at large.—Mr. Sloane's Case at Thetford.—Mr. Woolaston's Case.—Cases of Malden and Bedford.—Mr. Wilkes's Case not one of those in which Conviction in the King's Courts works an Incapacity of holding Offices of Trust.* Page 28.

## C H A P. VII.

*Other Arguments for the Incapacity of Mr. Wilkes considered—that he might have been sentenced to the Pillory—that he was a Prisoner in Execution—that the Judgment of the House is the Law of the Land.—Observations on those Parts of the Serious Considerations which derive the Authority of Parliamentary Disabilities from the Resolutions of the House only—and on those Parts of the Answer to the Question Stated which maintain a Power in the House to declare the Law differently at different Times.* Page 37.

## C H A P. VIII.

*Observations on the Precedents in the Serious Considerations---on the Remarks made in the Answer to the Question Stated on the Case of Sir Christopher Pigott.---*



## C O N T E N T S.

*Pigott.---Confession in that Answer, that the Decision on the Return determined the Merits of the Election before the Petitioners were heard.---The Argument there, that the Power of repeatedly expelling implies the Power of disabling.---Case of Lyme Regis as strong on one Side as many of the Precedents are on the other.---State of the Dispute.*

Page 45.

## C H A P. IX.

*Danger from transgressing the Bounds prescribed by Law---the Expediency of Expulsions considered.---Possibility of the Elected turning their Powers against their Constituents.---The Checks provided by our Constitution against Abuse of Power---by the Crown---or by the Representatives.---Necessity of adhering to the Law of the Land, proved from Mr. Pym's Speech, King Charles's Declaration, and Lord Chief Justice Holt's Argument.---The ill Consequences of this Decision, so far as they may affect the Conduct of Members of the House of Commons.---The Rights of Electors cannot be taken away but by Act of Parliament---how this Precedent tends to varying the Rights of Election in all Places, and particularly to extend the landed Qualification of Electors for Counties.*

Page 50.

T H E E N D.











